

## Assembly Bill No. 797

### CHAPTER 320

An act to add Article 4 (commencing with Section 100150) to Chapter 5 of Part 12 of, and to add Article 12 (commencing with Section 103394) to Chapter 5 of Part 15 of, Division 10 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 20, 2013. Filed with  
Secretary of State September 20, 2013.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 797, Gordon. Transit districts: contracts.

Existing law creates the Santa Clara County Valley Transportation Authority with various powers and duties relative to transportation projects and services in the County of Santa Clara. Existing law creates the San Mateo County Transit District with various powers and duties relative to transportation projects and services in the County of San Mateo. Existing law authorizes the authority and the district to enter into contracts, as specified.

This bill would authorize the authority and the district to utilize the Construction Manager/General Contractor project delivery contract method for transit projects within their respective jurisdictions, subject to certain conditions and requirements. The bill would require the authority or district to reimburse the Department of Industrial Relations for certain costs of performing wage monitoring and enforcement on projects using this contracting method, and would require those funds to be used by the department for enforcement of prevailing wage requirements on those projects.

*The people of the State of California do enact as follows:*

SECTION 1. Article 4 (commencing with Section 100150) is added to Chapter 5 of Part 12 of Division 10 of the Public Utilities Code, to read:

#### Article 4. Construction Manager/General Contractor Project Delivery Contracts

100150. For purposes of this article, the following terms shall have the following meanings:

(a) "Construction Manager/General Contractor method" or "CMGC" means the Construction Manager/General Contractor method as defined in subdivision (b) of Section 6951 of the Public Contract Code.

(b) “Construction manager” means a construction manager as defined in subdivision (c) of Section 6951 of the Public Contract Code.

100151. (a) Subject to the limitations of this article, the authority may utilize the CMGC project delivery method for public transit projects within its jurisdiction.

(b) The authority may enter into a CMGC project delivery method contract pursuant to this article if, after evaluation of the traditional design-bid-build process of construction and of the CMGC project delivery method in a public meeting, the authority makes a written finding that use of the CMGC project delivery method on the specific project under consideration will accomplish one or more of the following objectives: reduce project costs, expedite the project’s completion, or provide features not achievable through the design-bid-build method. This finding shall be made prior to the authority entering into a CMGC project delivery method contract. In the CMGC project delivery method proposal, the written findings shall be included as part of an application for state funds for a transit project.

100152. (a) Except as specified in subdivision (b), the authority shall comply with subdivision (f) of Section 1771.5 of the Labor Code and shall reimburse the Department of Industrial Relations for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code on projects using the CMGC project delivery method under this article. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund, created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(b) In lieu of complying with subdivision (a), the authority may elect to enter into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

100153. (a) If a contract for CMGC services is entered into pursuant to this article and includes preconstruction services by the construction manager, the authority shall enter into a written contract with the construction manager for preconstruction services, under which the authority shall pay the construction manager a fee for preconstruction services in an amount agreed upon by the authority and the construction manager. The preconstruction services contract may include fees for services to be performed during the contract period; provided, however, the authority shall not request or obtain a fixed price or a guaranteed maximum price for the construction contract from the construction manager or enter into a construction contract with the construction manager until after the authority has entered into a services contract. A preconstruction services contract shall provide for the subsequent negotiation for construction of all or any discrete phase or phases of the project and shall provide for the authority to own the design plans and other preconstruction services work product.

(b) A contract for construction services will be awarded after the plans have been sufficiently developed and either a fixed price or a guaranteed maximum price has been successfully negotiated. In the event that a fixed price or a guaranteed maximum price is not negotiated, the authority may award the contract for construction services utilizing any other procurement method authorized by law.

(c) The construction manager shall perform not less than 30 percent of the work covered by the fixed price or guaranteed maximum price agreement reached. Work that is not performed directly by the construction manager shall be bid to subcontractors pursuant to Section 6955 of the Public Contracts Code.

100154. Nothing in this article affects, expands, alters, or limits any rights or remedies otherwise available at law.

100155. (a) Upon completion of a project using the CMGC project delivery method, the authority shall prepare a progress report to the board of directors. The progress report shall include, but shall not be limited to, all of the following information:

- (1) A description of the project.
- (2) The entity that was awarded the project.
- (3) The estimated and actual costs of the project.
- (4) The estimated and actual schedule for project completion.
- (5) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the project, including, but not limited to, the resolution of the protests.
- (6) An assessment of the prequalification process and criteria utilized under this article.
- (7) A description of the method used to evaluate the bid or proposal, including the weighting of each factor and an assessment of the impact of this requirement on a project.
- (8) A description of any challenges or unexpected problems that arose during the construction of the project and a description of the solutions that were considered and ultimately implemented to address those challenges and problems.
- (9) Recommendations to improve the CMCG project delivery method authorized under this article.

(b) The progress report shall be made available on the authority's Internet Web site.

100156. (a) The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(b) Contracts awarded pursuant to this article shall be valid until the project is completed.

SEC. 2. Article 12 (commencing with Section 103394) is added to Chapter 5 of Part 15 of Division 10 of the Public Utilities Code, to read:

Article 12. Construction Manager/General Contractor Project Delivery Contracts

103394. For purposes of this article, the following terms shall have the following meanings:

(a) “Construction Manager/General Contractor method” or “CMGC” means the Construction Manager/General Contractor method as defined in subdivision (b) of Section 6951 of the Public Contract Code.

(b) “Construction manager” means a construction manager as defined in subdivision (c) of Section 6951 of the Public Contract Code.

103395. (a) Subject to the limitations of this article, the district may utilize the CMGC project delivery method for public transit projects within its jurisdiction.

(b) The district may enter into a CMGC project delivery method contract pursuant to this article if, after evaluation of the traditional design-bid-build process of construction and of the CMGC project delivery method in a public meeting, the district makes a written finding that use of the CMGC project delivery method on the specific project under consideration will accomplish one or more of the following objectives: reduce project costs, expedite the project’s completion, or provide features not achievable through the design-bid-build method. This finding shall be made prior to the district entering into a CMGC project delivery method contract. In the CMGC project delivery method proposal, the written findings shall be included as part of an application for state funds for a transit project.

103396. (a) Except as specified in subdivision (b), the district shall comply with subdivision (f) of Section 1771.5 of the Labor Code and shall reimburse the Department of Industrial Relations for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code on projects using the CMGC project delivery method under this article. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund, created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

(b) In lieu of complying with subdivision (a), the district may elect to enter into a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

103397. (a) If a contract for CMGC services is entered into pursuant to this article and includes preconstruction services by the construction manager, the district shall enter into a written contract with the construction manager for preconstruction services, under which the district shall pay the construction manager a fee for preconstruction services in an amount agreed upon by the district and the construction manager. The preconstruction services contract may include fees for services to be performed during the contract period; provided, however, the district shall not request or obtain

a fixed price or a guaranteed maximum price for the construction contract from the construction manager or enter into a construction contract with the construction manager until after the district has entered into a services contract. A preconstruction services contract shall provide for the subsequent negotiation for construction of all or any discrete phase or phases of the project and shall provide for the district to own the design plans and other preconstruction services work product.

(b) A contract for construction services will be awarded after the plans have been sufficiently developed and either a fixed price or a guaranteed maximum price has been successfully negotiated. In the event that a fixed price or a guaranteed maximum price is not negotiated, the district may award the contract for construction services utilizing any other procurement method authorized by law.

(c) The construction manager shall perform not less than 30 percent of the work covered by the fixed price or guaranteed maximum price agreement reached. Work that is not performed directly by the construction manager shall be bid to subcontractors pursuant to Section 6955 of the Public Contracts Code.

103398. Nothing in this article affects, expands, alters, or limits any rights or remedies otherwise available at law.

103399. (a) Upon completion of a project using the CMGC project delivery method, the district shall prepare a progress report to the board of directors. The progress report shall include, but shall not be limited to, all of the following information:

- (1) A description of the project.
- (2) The entity that was awarded the project.
- (3) The estimated and actual costs of the project.
- (4) The estimated and actual schedule for project completion.
- (5) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the project, including, but not limited to, the resolution of the protests.
- (6) An assessment of the prequalification process and criteria utilized under this article.
- (7) A description of the method used to evaluate the bid or proposal, including the weighting of each factor and an assessment of the impact of this requirement on a project.
- (8) A description of any challenges or unexpected problems that arose during the construction of the project and a description of the solutions that were considered and ultimately implemented to address those challenges and problems.
- (9) Recommendations to improve the CMCG project delivery method authorized under this article.

(b) The progress report shall be made available on the district's Internet Web site.

103399.1. (a) The provisions of this article are severable. If any provision of this article or its application is held invalid, that invalidity shall

not affect other provisions or applications that can be given effect without the invalid provision or application.

(b) Contracts awarded pursuant to this article shall be valid until the project is completed.