



Home	Bill Information	California Law	Publications	Other Resources	My Subscriptions	My Favorites
------	------------------	----------------	--------------	-----------------	------------------	--------------

AB-427 Otay Mesa East Toll Facility Act: alternative project delivery method. (2023-2024)

SHARE THIS:  

Date Published: 09/09/2023 04:00 AM

Assembly Bill No. 427

CHAPTER 163

An act to amend Sections 31462 and 31468 of the Streets and Highways Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 08, 2023. Filed with Secretary of State September 08, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 427, Alvarez. Otay Mesa East Toll Facility Act: alternative project delivery method.

The Otay Mesa East Toll Facility Act authorizes the San Diego Association of Governments (SANDAG) to carry out a construction project for the State Highway Route 11 corridor, including, among other things, highway improvements and international border crossing facilities, to be operated as a toll facility. Existing law authorizes the use of alternative bidding and building procedures for a project or components of a project after SANDAG commences a comparison of the traditional design-bid-build process of construction with the proposed alternative project delivery method in a public meeting and if the governing board of SANDAG makes written findings that use of an alternative project delivery method on the specific project or project component under consideration will accomplish at least one of 3 specified objectives. Existing law requires the design-bid-build method of project construction for the project or project components if these conditions are not met.

This bill would provide that SANDAG is no longer required to use the design-bid-build delivery method for construction of a project if specified conditions for utilizing an alternative delivery method are not met. This bill would authorize SANDAG to use the Construction Manager/General Contractor method (CMGC), as defined, as an additional alternative project delivery method. The bill would impose specified requirements on SANDAG and a construction manager, as defined, if they enter into a CMGC contract for alternative project delivery.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 31462 of the Streets and Highways Code is amended to read:

31462. For purposes of this chapter, the following definitions shall apply:

(a) "Best value" means a value determined by evaluation of objective criteria that relate to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the local agency and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors.

(b) "Board" means the board of directors of SANDAG.

(c) "Bonds" means any bonds, notes, variable rate and variable maturity securities, and any other evidence of indebtedness issued pursuant to this chapter.

(d) "Construction Manager/General Contractor method" or "CMGC" means a project delivery method using a best value procurement process in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction services during the construction phase of the project. The execution of the design and the construction of the project may be in sequential phases or concurrent phases.

(e) "Construction manager" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting and engineering services as needed pursuant to a CMGC contract.

(f) "Corridor" means State Route 11 in the County of San Diego, as defined in Section 311.

(g) "Costs" includes the cost of construction or acquisition; the cost of the acquisition of all land, rights-of-way, property, rights, easements, and interests acquired by SANDAG for the construction; the cost of demolishing or removing any buildings or structures on land acquired, including the cost of acquiring any lands to which buildings or structures may be moved; the cost of all machinery and equipment, financing charges, interest before and during construction and, if considered advisable by SANDAG, costs of accounting, consulting, printing, advertising, and travel, cost of traffic estimates and of engineering and legal services, plans, specifications, surveys, estimates of cost and of revenues, and other expenses necessary or incident to determining the feasibility or practicability of constructing, repairing, or improving a project; administrative expenses; and such other expenses as may be necessary or incident to the construction, repair, or improvement of a project, the financing of the project, the placing and maintaining of a project in operation, and any payments to an entity to cover all or a portion of the costs described in this chapter. Any money paid or advanced to SANDAG with its approval for traffic surveys, borings, preparation of plans and specifications, and other engineering services in connection with the construction, repair, or improvement of a project shall be regarded as a part of the cost of a project and may be reimbursed out of the proceeds of the revenue bonds issued for a project as authorized in this chapter. Cost includes the cost to operate, maintain, repair, or improve a project.

(h) "Department" means the Department of Transportation.

(i) "Design-build" means a procurement process in which both the design and construction of a project are procured in a single phase.

(j) "Design sequencing" means a procurement process that enables the sequencing of design activities to permit each construction phase to commence when design for that phase is complete, instead of requiring the design for the entire project to be completed before commencing construction.

(k) "Entity" means the United States or any agency or department of the United States, any State of California agency, department or political subdivision of the state, or any public or private corporation, company, partnership, joint venture, foundation, trust, estate, individual, or other legal business organization.

(l) "Federal agency" means any agency or department of the United States.

(m) "Project" or "projects" means any property and related facilities, whether or not now in existence, acquired or constructed to facilitate the movement of goods and people along the corridor or at the Otay Mesa East Port of Entry, including property suitable for any of the following purposes:

(1) International ports of entry.

(2) International border crossing facilities.

(3) Transportation facilities, including highway and roadway, public transit, and nonmotorized facilities, and other projects supporting any transportation facility.

(4) A bridge or tunnel, overpasses, underpasses, entrance plazas, toll houses, administration, storage and other buildings and facilities, and all equipment therefor, and may include terminal facilities, customs and immigration facilities, and such approaches and approach highways as may be determined by SANDAG to be necessary to facilitate the flow of traffic or to connect a project with the existing highway systems, together with all property, rights, easements, and interests acquired by SANDAG for the construction or operation of a project, including, but not limited to, energy and communication lines.

(n) "Property" means land, improvements to land, buildings, improvements to buildings, machinery and equipment of any kind, operating capital, and any other real or personal property necessary for a project.

(o) "SANDAG" means the San Diego Association of Governments, as referenced in the San Diego Regional Transportation Consolidation Act, Chapter 3 (commencing with Section 132350) of Division 12.7 of the Public Utilities Code.

(p) "Toll" means a toll, fee, or other charge for entrance to or use of the corridor and such toll, fee, or other charge as may be governed by an agreement under Section 31483.

(q) "Trustee" means any financial institution or trust company actually doing business in this state.

SEC. 2. Section 31468 of the Streets and Highways Code is amended to read:

31468. (a) The Legislature has recognized the merits of alternative project delivery methods in the past by authorizing their use for projects undertaken by school districts, the University of California, specified local government projects, state office buildings, and public transit projects.

(b) It is the intent of the Legislature to provide optional, alternative procedures for delivering the project and its components pursuant to this act. SANDAG may enter into an alternative project delivery method contract authorized in this section on a project or any project component, after comparison of the traditional design, bid, and build process of construction with the proposed alternative project delivery method in a public meeting, if the governing board makes written findings that use of an alternative project delivery method on the specific project or project component under consideration will accomplish at least one of the following objectives: reduce comparable project costs, expedite a project's completion, or provide features not achievable through the traditional design-bid-build method.

(c) SANDAG may utilize the following alternative project delivery methods if the conditions in this section are met:

(1) Design-build.

(2) Design sequencing.

(3) Construction Manager/General Contractor (CMGC).

(d) (1) If a contract for CMGC services is entered into pursuant to this chapter and includes preconstruction services by the construction manager, SANDAG shall enter into a written contract with the construction manager for the preconstruction services, under which SANDAG shall pay the construction manager a fee for preconstruction services in an amount agreed upon by SANDAG and the construction manager. The preconstruction services contract may include fees for services to be performed during the contract period, provided that SANDAG 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 SANDAG 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 SANDAG to own the design plans and other preconstruction services work products.

(2) A contract for construction services may 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 successfully negotiated, SANDAG may award the contract for construction services utilizing any other procurement method authorized by law.

(3) 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 Contract Code.

(e) It is the intent of the Legislature that alternative project delivery methods as authorized in this section shall not be construed to extend, limit, or change in any manner the legal responsibility of public agencies and contractors to comply with existing laws.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for state and local governments to meet critical deadlines and stakeholder agreements on a project of regional, statewide, and national significance in partnership with the federal government, while protecting worker and public safety, it is necessary that this act take effect immediately.