

Date of Hearing: March 20, 2023

ASSEMBLY COMMITTEE ON TRANSPORTATION

Laura Friedman, Chair

AB 427 (Alvarez) – As Introduced February 6, 2023

**SUBJECT:** Otay Mesa East Toll Facility Act: alternative project delivery method

**SUMMARY:** Authorizes the San Diego Association of Governments (SANDAG) to use the Construction Manager/General Contractor (CMGC) project delivery method on the State Route 11/ Otay Mesa East Port of Entry project if specified conditions are met. Specifically, **this bill:**

- 1) Defines “best value” to mean 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.
- 2) Defines CMGC to mean 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.
- 3) Defines a “construction manager” as 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.
- 4) Provides that SANDAG is no longer required to use design-bid-build delivery method if specified conditions for utilizing an alternative delivery method are not met.
- 5) Authorizes the use of CMGC as an alternative project delivery method if specified conditions are met.
- 6) Establishes that if a contract for CMGC services is entered into that 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.

- a) 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.
- b) The construction manager shall perform not less than 30% 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.

**EXISTING LAW:**

- 1) Establishes SANDAG as the transportation planning agency for the San Diego County region. (Public Utilities Code Section 132005)
- 2) Authorizes SANDAG, pursuant to the Otay Mesa East Toll Facility Act, to carry out a construction project for the State Route (SR) 11 corridor, including, among other things, highway improvements and international border crossing facilities, to be operated as a toll facility. (Streets and Highways Code (SHC) beginning with Section 31460)
- 3) Authorizes SANDAG to utilize the alternative project delivery methods of design-build and design sequencing on the Otay Mesa East Toll Facility if certain conditions are met. (SHC 31468)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

As the United States (U.S.)-Mexico border region grows, there is a need to improve the commercial movement of goods, services, and passengers through an efficient, integrated system to bolster the local, state, federal, and international economies. In 2019, the Otay Mesa and Tecate ports of entry processed a combined \$48.3 billion in total bilateral trade, and that number is expected to grow in coming years. Currently, more than 90% of California-Mexico trade is moved by truck. The State Route 11/Otay Mesa East Port of Entry project will facilitate job growth and new economic opportunities for private sectors on both sides of the border.

The project is a joint venture between SANDAG and Caltrans, in collaboration with state and federal partners in the U.S. and Mexico, to create a 21st century border crossing for the San Diego-Baja California region that will enhance regional mobility and fuel economic growth and binational trade. These improvements will provide a direct connection to the new port of entry, helping to enable fast, predictable, and secure border crossings. Reducing vehicle wait times and building in smart technologies will also help to reduce greenhouse gas (GHG) emissions and improve air quality in the border region.

SB 985 (Hueso) Chapter 422, Statutes of 2022 made various changes to the Otay Mesa East Toll Facility Act, including authorizing SANDAG to enter into an agreement and contracts, as specified, with the government of Mexico or a government agency for the purposes of imposing and collecting tolls; and acquiring, operating, and maintaining tolling facilities at the Otay Mesa East Port of Entry.

Current law allows SANDAG to use design-build and design sequencing as alternative project delivery methods if certain conditions are met. This bill would authorize SANDAG to also use the CMGC as an alternative project delivery method if specified conditions are met.

CMGC allows the project manager to select a contractor early in the project development process to act in an advisory role. The CMGC contractor provides constructability reviews, value engineering suggestions, construction estimates, and other construction-related recommendations. When design is significantly completed, the CMGC contractor will provide a price to construct the project. If the price is acceptable, the CMGC contractor will become the general contractor and will construct the project. Engaging the construction contractor during the design phase can provide the opportunity to reduce the number and cost of change orders during construction and help to mitigate schedule risks for the construction phase.

According to the author, “AB 427 clarifies that the SANDAG can use the Construction Manager/General Contractor (CMGC) contracting method on the SR11/Otay Mesa East Port of Entry Project (POE). The Otay Mesa East Port of Entry Act is a joint effort between SANDAG and Caltrans in collaboration with state and federal partners between the United States and Mexican governments. The project is expected to reduce the border-crossing wait time up to 1-2 hours to 20 minutes. It also serves as a relief valve for other border crossings in the area, decreasing peak wait times at regional existing land ports of entry by 50% on opening day. This clarification ensures the SR11/Otay Mesa East Port of Entry Project (POE) meets critical timelines.”

In 2012, the California Legislature passed, and the Governor signed, AB 2498 (Gordon), authorizing Caltrans to use the CMGC delivery method. The 2012 law authorized Caltrans to use CMGC on up to six projects as a pilot program. Subsequent legislation provided additional authority in 2016 for six additional projects and in 2017 legislation provided authority to 10 additional projects. In 2018, SB 1262 (Beall) Chapter 465, provided general authority for use of the CMGC delivery method on projects over \$10 million construction capital cost. At the local level, CMGC has been used to deliver various transit projects statewide.

SANDAG currently employs the CMGC contracting method on large infrastructure projects in San Diego County utilizing its own governing statute, as amended by SB 1549 (Vargas) Chapter 767, Statutes of 2012. Most recently, SANDAG utilized CMGC to successfully complete the \$2.2 billion Mid-Coast trolley line extension, which connected UCSD, Scripps Memorial Hospital, and two large employment centers to the blue line, which extends to the San Ysidro border.

Caltrans has used CMGC authority on toll projects and is currently using CMGC on a \$73 million project to convert toll plazas at the Antioch, Benicia, Carquinez, Dumbarton, San Mateo-Hayward, Richmond-San Rafael, and the San Francisco-Oakland Bay bridges to Open Road Tolling in Contra Costa, Solano, and Alameda counties. Similarly, Caltrans authorized the use of CMGC project delivery method for the San Mateo US 101 express lanes which include tolling.

*Committee comments:*

This bill clarifies SANDAG's authority to use CMGC on the Otay Mesa East Toll Facility.

*Previous legislation.* SB 985 (Hueso) Chapter 422, Statutes of 2022, makes various changes to the Otay Mesa East Toll Facility Act (Act), including authorizing the SANDAG to enter into an agreement and contracts, as specified, with the government of Mexico or a government agency for the purposes of imposing and collecting tolls; and acquiring, operating, and maintaining tolling facilities at the Otay Mesa East Port of Entry.

SB 1262 (Beall) Chapter 465, Statutes of 2018 provided general authority for use of the CMGC delivery method on projects over \$10 million construction capital cost.

AB 115 (Committee on Budget) Chapter 20, Statutes of 2017 provided authority for 12 additional projects, at least 10 of which shall have construction costs greater than \$10 million.

AB 2126 (Mullin) Chapter 750, Statutes of 2016 authorized Caltrans to use CMGC on 12 projects and required eight out of the 12 projects to use department employees or consultants under contract with the department to perform all project design and engineering services.

SB 1549 (Vargas) Chapter 767, Statutes of 2012 allows SANDAG to use alternative project delivery methods, including CMGC, for public transit projects within its jurisdiction.

AB 2498 (Gordon) Chapter 752, Statutes of 2012 authorized Caltrans to use CMGC on up to six projects as a pilot program.

SB 1486 (Ducheny) Chapter 720, Statutes of 2008) (Otay Mesa East Port of Entry Act) allowed for the construction and operation of State Highway Route 11 and a new federal Otay Mesa East Port of Entry Corridor.

**REGISTERED SUPPORT / OPPOSITION:****Support**

San Diego Association of Governments  
State Building and Construction Trades Council of California, AFL-CIO

**Opposition**

None on file

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