

AMENDED IN SENATE JUNE 21, 2012

AMENDED IN ASSEMBLY MAY 25, 2012

AMENDED IN ASSEMBLY APRIL 26, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1565

Introduced by Assembly Member Fuentes
(Coauthor: Senator Alquist)

January 30, 2012

An act to amend, repeal, and add Section 20111.5 of, and to add and repeal Section 20111.6 of, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1565, as amended, Fuentes. Public contracts: school districts: bidding requirements.

Under existing law, the governing board of a school district may require each prospective bidder for specified contracts to submit a standardized questionnaire and financial statement, including information relating to financial ability and experience in performing public works, which is required to be verified under oath. Existing law further requires a school district requiring the above information to adopt and apply a uniform system of rating bidders on the basis of the completed questionnaires and financial statements, as specified.

This bill, until January 1, 2019, would require the questionnaire and uniform system of rating bidders described above to cover, at a minimum, the issues covered by the standardized questionnaire and model guidelines for rating bidders developed by the Department of Industrial Relations, as specified. This bill would provide that the

questionnaire and uniform system of rating bidders described above shall not preclude the governing board of the district from prequalifying or disqualifying a subcontractor. This bill would provide that these provisions ~~shall~~ *would* not apply to school districts with an average daily attendance of less than 2,500. *This bill would provide that bidders would include the prime contractor and, if utilized, all electrical, mechanical, and plumbing subcontractors. This bill would require a school district to provide a list of prequalified bidders to all bidders at least 2 business days prior to the dates fixed for the public opening of sealed bids for specified public projects.*

This bill, for contracts awarded on and after January 1, 2014, and until January 1, 2019, would also require the governing board of the district, except for school districts with an average daily attendance of less than 2,500, for certain public projects, if the governing board of the district chooses not to follow the uniform system of rating bidders described above, to use other procedures, which require a standardized questionnaire and financial statement to be verified under oath, for bidding applicable to public entities, as prescribed. The bill would also require the Director of Industrial Relations, on or before January 1, 2018, to submit a report to the Legislature evaluating whether labor violations have decreased, as specified, and to recommend improvements to the system for prequalifying contractors and subcontractors on school district projects. By expanding the scope of an existing crime and by imposing new duties on local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 20111.5 of the Public Contract Code is
2 amended to read:

3 20111.5. (a) The governing board of the district may require
4 that each prospective bidder for a contract, as described under
5 Section 20111, complete and submit to the district a standardized
6 questionnaire and financial statement in a form specified by the
7 district, including a complete statement of the prospective bidder's
8 financial ability and experience in performing public works. The
9 questionnaire and financial statement shall be verified under oath
10 by the bidder in the manner in which civil pleadings in civil actions
11 are verified. The questionnaires and financial statements shall not
12 be public records and shall not be open to public inspection.

13 (b) Any school district requiring prospective bidders to complete
14 and submit questionnaires and financial statements, as described
15 in subdivision (a), shall adopt and apply a uniform system of rating
16 bidders on the basis of the completed questionnaires and financial
17 statements, in order to determine the size of the contracts upon
18 which each bidder shall be deemed qualified to bid.

19 (c) The questionnaire described in subdivision (a), and the
20 uniform system of rating bidders described in subdivision (b), shall
21 cover, at a minimum, the issues covered by the standardized
22 questionnaire and model guidelines for rating bidders developed
23 by the Department of Industrial Relations pursuant to subdivision
24 (a) of Section 20101.

25 (d) Each ~~prospective bidder~~ *prime contractor providing a bid*
26 on any contract described under Section 20111 shall be furnished
27 by the school district letting the contract with a standardized
28 proposal form that, when completed and executed, shall be
29 submitted as his or her bid. Bids not presented on the forms so
30 furnished shall be disregarded.

31 (e) A proposal form required pursuant to subdivision (d) shall
32 not be accepted from any person or other entity that is required to
33 submit a completed questionnaire and financial statement for
34 prequalification pursuant to subdivision (a) *or from any person or*
35 *other entity that uses a subcontractor that is required to submit a*
36 *completed questionnaire and financial statement for*
37 *prequalification pursuant to subdivisions (a) and (i), but has not*
38 *done so at least five days 10 business days* prior to the date fixed

1 for the public opening of sealed bids or has not been prequalified,
 2 pursuant to subdivision (b), for at least ~~one day~~ *five business days*
 3 prior to that date.

4 (f) *If a public project covered by this section includes electrical,*
 5 *mechanical, or plumbing components that will be performed by*
 6 *electrical, mechanical, or plumbing subcontractors, a list of*
 7 *prequalified prime contractors and electrical, mechanical, and*
 8 *plumbing subcontractors shall be made available by the school*
 9 *district to all bidders at least two business days prior to the dates*
 10 *fixed for the public opening of sealed bids.*

11 ~~(f)~~
 12 (g) Notwithstanding subdivision (e), any school district may
 13 establish a process for prequalifying prospective bidders pursuant
 14 to this section on a quarterly basis and may authorize that
 15 prequalification to be considered valid for up to one calendar year
 16 following the date of initial prequalification.

17 ~~(g)~~
 18 (h) This section shall not preclude the governing board of the
 19 district from prequalifying or disqualifying a subcontractor. ~~The~~
 20 ~~disqualification of a subcontractor by the governing board of the~~
 21 ~~district does not disqualify an otherwise prequalified contractor.~~

22 (i) *For purposes of this section, bidders shall include the prime*
 23 *contractor and, if utilized, all electrical, mechanical, and plumbing*
 24 *subcontractors.*

25 (j) *For purposes of this section, electrical, mechanical, and*
 26 *plumbing subcontractors are contractors licensed pursuant to*
 27 *Section 7058 of the Business and Professions Code, specifically*
 28 *contractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38,*
 29 *C-42, C-43, and C-46 licenses, pursuant to regulations of the*
 30 *Contractors State License Board.*

31 ~~(h)~~
 32 (k) The amendments made by the act adding this subdivision
 33 shall not apply to a school district with an average daily attendance
 34 of less than 2,500.

35 ~~(i)~~
 36 (l) This section shall become inoperative on January 1, 2019,
 37 and, as of July 1, 2019, is repealed.

38 SEC. 2. Section 20111.5 is added to the Public Contract Code,
 39 to read:

1 20111.5. (a) The governing board of the district may require
2 that each prospective bidder for a contract, as described under
3 Section 20111, complete and submit to the district a standardized
4 questionnaire and financial statement in a form specified by the
5 district, including a complete statement of the prospective bidder's
6 financial ability and experience in performing public works. The
7 questionnaire and financial statement shall be verified under oath
8 by the bidder in the manner in which civil pleadings in civil actions
9 are verified. The questionnaires and financial statements shall not
10 be public records and shall not be open to public inspection.

11 (b) Any school district requiring prospective bidders to complete
12 and submit questionnaires and financial statements, as described
13 in subdivision (a), shall adopt and apply a uniform system of rating
14 bidders on the basis of the completed questionnaires and financial
15 statements, in order to determine the size of the contracts upon
16 which each bidder shall be deemed qualified to bid.

17 (c) Each prospective bidder on any contract described under
18 Section 20111 shall be furnished by the school district letting the
19 contract with a standardized proposal form that, when completed
20 and executed, shall be submitted as his or her bid. Bids not
21 presented on the forms so furnished shall be disregarded.

22 (d) A proposal form required pursuant to subdivision (c) shall
23 not be accepted from any person or other entity that is required to
24 submit a completed questionnaire and financial statement for
25 prequalification pursuant to subdivision (a), but has not done so
26 at least five days prior to the date fixed for the public opening of
27 sealed bids or has not been prequalified, pursuant to subdivision
28 (b), for at least one day prior to that date.

29 (e) Notwithstanding subdivision (d), any school district may
30 establish a process for prequalifying prospective bidders pursuant
31 to this section on a quarterly basis and may authorize that
32 prequalification to be considered valid for up to one calendar year
33 following the date of initial prequalification.

34 (f) This section shall become operative on January 1, 2019.

35 SEC. 3. Section 20111.6 is added to the Public Contract Code,
36 to read:

37 20111.6. (a) This section shall apply only to public projects,
38 as defined in subdivision (c) of Section 22002, for which the
39 governing board of the district uses funds received pursuant to the
40 Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5

1 (commencing with Section 17070.10) of Part 10 of Division 1 of
2 Title 1 of the Education Code) *or any funds from any future state*
3 *school bond for a public project, when the expenditure exceeds*
4 *that involves a projected expenditure of one million dollars*
5 *(\$1,000,000) or more.*

6 (b) If the governing board of the district does not utilize the
7 procedures set forth in Section 20111.5 for a contract meeting the
8 criteria of subdivision (a), then the governing board of the district
9 shall use the procedures for qualification of bidders set forth in
10 Section 20101.

11 (c) For purposes of this section, bidders shall include ~~all~~
12 ~~subcontractors performing work in excess of 3 percent of the total~~
13 ~~cost~~ *the prime contractor and, if utilized, all electrical, mechanical,*
14 *and plumbing subcontractors.*

15 (d) *If a public project covered by this section includes electrical,*
16 *mechanical, or plumbing components that will be performed by*
17 *electrical, mechanical, or plumbing contractors, a list of*
18 *prequalified prime contractors and electrical, mechanical, and*
19 *plumbing subcontractors shall be made available by the school*
20 *district to all bidders at least two business days prior to the dates*
21 *fixed for the public opening of sealed bids.*

22 (e) *For purposes of this section, electrical, mechanical, and*
23 *plumbing subcontractors are contractors licensed pursuant to*
24 *Section 7058 of the Business and Professions Code, specifically*
25 *contractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38,*
26 *C-42, C-43, and C-46 licenses, pursuant to regulations of the*
27 *Contractors State License Board.*

28 ~~(e)~~

29 (f) This section shall not apply to a school district with an
30 average daily attendance of less than 2,500.

31 ~~(e)~~

32 (g) This section shall apply only to contracts awarded on or
33 after January 1, 2014.

34 ~~(f)~~

35 (h) (1) On or before January 1, 2018, the Director of Industrial
36 Relations shall (A) submit a report to the Legislature evaluating
37 whether, during the years this section has applied to contracts,
38 violations of the Labor Code on school district projects have
39 decreased as compared to the same number of years immediately
40 preceding the enactment of this section, and (B) recommend

1 improvements to the system for prequalifying contractors and
2 subcontractors on school district projects.

3 (2) A report to be submitted pursuant to this subdivision shall
4 be submitted in compliance with Section 9795 of the Government
5 Code.

6 ~~(g)~~

7 (i) This section shall become inoperative on January 1, 2019,
8 and, as of July 1, 2019, is repealed.

9 SEC. 4. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution for certain
11 costs that may be incurred by a local agency or school district
12 because, in that regard, this act creates a new crime or infraction,
13 eliminates a crime or infraction, or changes the penalty for a crime
14 or infraction, within the meaning of Section 17556 of the
15 Government Code, or changes the definition of a crime within the
16 meaning of Section 6 of Article XIII B of the California
17 Constitution.

18 However, if the Commission on State Mandates determines that
19 this act contains other costs mandated by the state, reimbursement
20 to local agencies and school districts for those costs shall be made
21 pursuant to Part 7 (commencing with Section 17500) of Division
22 4 of Title 2 of the Government Code.