

AMENDED IN ASSEMBLY MAY 4, 2015
AMENDED IN ASSEMBLY MARCH 26, 2015
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 975

Introduced by Assembly Member Frazier

February 26, 2015

An act to amend Sections 20101, 20111.5, and 20111.6 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 975, as amended, Frazier. Local Agency Public Construction Act: bid criteria.

The Local Agency Public Construction Act ~~authorizes the governing board of any school district, without advertising for bids, to authorize any public corporation or agency, including any county, city, town, or district, to lease data-processing equipment, and to purchase materials, supplies, equipment, automotive vehicles, tractors, and other personal property for the district, as provided.~~ *sets forth the requirements for competitive bidding on various types of contracts awarded by state and local agencies, including a school district.* The act ~~requires~~ *authorizes* a public entity or school district to require prospective bidders for a construction contract to complete and submit to the governing board a prequalification questionnaire and financial statement, and requires the board to adopt and apply a uniform system of rating bidders on the basis of completed questionnaires and financial statements.

This bill would also prohibit a public ~~agency, agency or school district~~ under the act, from disqualifying ~~or penalizing~~ a prospective bidder ~~based on the bidder's involvement in an affirmative~~ *solely on whether*

~~the prospective bidder filed a claim filed by the project owner or the fact that the bidder has filed a claim against a project owner, unless the claim is based upon a violation of the Labor Code or has been finally adjudicated and the settlement or award provided on the final judgment or settlement is greater than 20% of the adjusted contract amount against the prospective bidder. against a project owner.~~

Because this bill would impose new requirements on the governing body of a local school board, it 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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

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 20101 of the Public Contract Code is
2 amended to read:
3 20101. (a) Except as provided in Section 20111.5, a public
4 entity subject to this part may require that each prospective bidder
5 for a contract complete and submit to the entity a standardized
6 questionnaire and financial statement in a form specified by the
7 entity, including a complete statement of the prospective bidder's
8 experience in performing public works. The standardized
9 questionnaire may not require prospective bidders to disclose any
10 violations of Chapter 1 (commencing with Section 1720) of Part
11 7 of Division 2 of the Labor Code committed prior to January 1,
12 1998, if a violation was based on a subcontractor's failure to
13 comply with these provisions and the bidder had no knowledge of
14 the subcontractor's violations. The Department of Industrial
15 Relations, in collaboration with affected agencies and interested
16 parties, shall develop model guidelines for rating bidders, and draft
17 the standardized questionnaire, that may be used by public entities
18 for the purposes of this part. The Department of Industrial
19 Relations, in developing the standardized questionnaire, shall

1 consult with affected public agencies, cities and counties, the
2 construction industry, the surety industry, and other interested
3 parties. The questionnaire and financial statement shall be verified
4 under oath by the bidder in the manner in which civil pleadings in
5 civil actions are verified. The questionnaires and financial
6 statements shall not be public records and shall not be open to
7 public inspection; however, records of the names of contractors
8 applying for prequalification status shall be public records subject
9 to disclosure under Chapter 3.5 (commencing with Section 6250)
10 of Division 7 of Title 1 of the Government Code.

11 (b) Any public entity 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 both the minimum requirements
16 permitted for qualification to bid, and the type and size of the
17 contracts upon which each bidder shall be deemed qualified to bid.
18 The uniform system of rating prospective bidders shall be based
19 on objective criteria.

20 (c) A public entity may establish a process for prequalifying
21 prospective bidders pursuant to this section on a quarterly basis
22 and a prequalification pursuant to this process shall be valid for
23 one calendar year following the date of initial prequalification.

24 (d) Any public entity requiring prospective bidders on a public
25 works project to prequalify pursuant to this section shall establish
26 a process that will allow prospective bidders to dispute their
27 proposed prequalification rating prior to the closing time for receipt
28 of bids. The appeal process shall include the following:

29 (1) Upon request of the prospective bidder, the public entity
30 shall provide notification to the prospective bidder in writing of
31 the basis for the prospective bidder's disqualification and any
32 supporting evidence that has been received from others or adduced
33 as a result of an investigation by the public entity.

34 (2) The prospective bidder shall be given the opportunity to
35 rebut any evidence used as a basis for disqualification and to
36 present evidence to the public entity as to why the prospective
37 bidder should be found qualified.

38 (3) If the prospective bidder chooses not to avail itself of this
39 process, the proposed prequalification rating may be adopted
40 without further proceedings.

(e) For the purposes of subdivision (a), a financial statement shall not be required from a contractor who has qualified as a Small Business Administration entity pursuant to paragraph (1) of subdivision (d) of Section 14837 of the Government Code, when the bid is no more than 25 percent of the qualifying amount provided in paragraph (1) of subdivision (d) of Section 14837 of the Government Code.

(f) Nothing in this section shall preclude an awarding agency from prequalifying or disqualifying a subcontractor. The disqualification of a subcontractor by an awarding agency does not disqualify an otherwise prequalified contractor.

~~(1)~~
(g) Any public agency requiring prospective bidders to complete and submit questionnaires shall not disqualify or otherwise penalize a prospective bidder through its uniform system of rating bidders based on either of the following: *solely on whether a prospective bidder has filed a claim against a project owner through the courts, mediation, or arbitration.*

~~(A) A prospective bidder is or has been involved in an affirmative claim filed by a project owner through the courts, mediation, or arbitration.~~

~~(B) A prospective bidder has filed a claim through the courts, mediation, or arbitration against a project owner.~~

~~(2) (A) For purposes of this subdivision, “affirmative claim” or “claim” does not include any claim based on a violation of the Labor Code.~~

~~(B) Nothing in this subdivision precludes a public agency from including in its uniform system of rating bidders criteria related to affirmative claims that have been finally adjudicated or settled, provided the settlement or final judgment or award on the affirmative claim is greater than 20 percent of the adjusted contract amount against the prospective bidder.~~

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

20111.5. (a) The governing board of the district may require that each prospective bidder for a contract, as described under Section 20111, complete and submit to the district a standardized questionnaire and financial statement in a form specified by the district, including a complete statement of the prospective bidder’s financial ability and experience in performing public works. The

1 questionnaire and financial statement shall be verified under oath
2 by the bidder in the manner in which civil pleadings in civil actions
3 are verified. The questionnaires and financial statements shall not
4 be public records and shall not be open to public inspection.

5 (b) Any school district requiring prospective bidders to complete
6 and submit questionnaires and financial statements, as described
7 in subdivision (a), shall adopt and apply a uniform system of rating
8 bidders on the basis of the completed questionnaires and financial
9 statements, in order to determine the size of the contracts upon
10 which each bidder shall be deemed qualified to bid.

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

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

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

28 (f) ~~(1) Any public agency school district~~ requiring prospective
29 bidders to complete and submit questionnaires shall not disqualify
30 ~~or otherwise penalize~~ a prospective bidder through its uniform
31 system of rating bidders ~~based on either of the following:~~ *solely*
32 *on whether a prospective bidder has filed a claim against a project*
33 *owner through the courts, mediation, or arbitration.*

34 ~~(A) A prospective bidder is or has been involved in an~~
35 ~~affirmative claim filed by a project owner through the courts,~~
36 ~~mediation, or arbitration.~~

37 ~~(B) A prospective bidder has filed a claim through the courts,~~
38 ~~mediation, or arbitration against a project owner.~~

1 ~~(2) (A) For purposes of this subdivision, “affirmative claim”~~
2 ~~or “claim” does not include any claim based on a violation of the~~
3 ~~Labor Code.~~

4 ~~(B) Nothing in this subdivision precludes a public agency from~~
5 ~~including in its uniform system of rating bidders criteria related~~
6 ~~to affirmative claims that have been finally adjudicated or settled,~~
7 ~~provided the settlement or final judgment or award on the~~
8 ~~affirmative claim is greater than 20 percent of the adjusted contract~~
9 ~~amount against the prospective bidder.~~

10 SEC. 3. Section 20111.6 of the Public Contract Code is
11 amended to read:

12 20111.6. (a) This section shall apply only to public projects,
13 as defined in subdivision (c) of Section 22002, for which the
14 governing board of the district uses funds received pursuant to the
15 Leroy F. Greene School Facilities Act of 1998 (Chapter 12.5
16 (commencing with Section 17070.10) of Part 10 of Division 1 of
17 Title 1 of the Education Code) or any funds from any future state
18 school bond for a public project that involves a projected
19 expenditure of one million dollars (\$1,000,000) or more.

20 (b) If the governing board of the district enters into a contract
21 meeting the criteria of subdivision (a), then the governing board
22 of the district shall require that prospective bidders for a
23 construction contract complete and submit to the board of the
24 district a standardized prequalification questionnaire and financial
25 statement. The questionnaire and financial statement shall be
26 verified under oath by the bidder in the manner in which civil
27 pleadings in civil actions are verified. The questionnaires and
28 financial statements shall not be public records and shall not be
29 open to public inspection.

30 (c) The board of the district shall adopt and apply a uniform
31 system of rating bidders on the basis of the completed
32 questionnaires and financial statements. This system shall also
33 apply to a person, firm, or corporation that constructs a building
34 described in Section 17406 or 17407 of the Education Code.

35 (d) The questionnaire and financial statement described in
36 subdivision (b), and the uniform system of rating bidders described
37 in subdivision (c), shall cover, at a minimum, the issues covered
38 by the standardized questionnaire and model guidelines for rating
39 bidders developed by the Department of Industrial Relations
40 pursuant to subdivision (a) of Section 20101.

1 (e) Each prospective bidder shall be furnished by the school
2 district letting the contract with a standardized proposal form that,
3 when completed and executed, shall be submitted as his or her bid.
4 Bids not presented on the forms so furnished shall be disregarded.

5 (f) A proposal form required pursuant to subdivision (e) shall
6 not be accepted from any person or other entity that is required to
7 submit a completed questionnaire and financial statement for
8 prequalification pursuant to subdivision (b) or from any person or
9 other entity that uses a subcontractor that is required to submit a
10 completed questionnaire and financial statement for
11 prequalification pursuant to subdivision (b), but has not done so
12 at least 10 business days prior to the date fixed for the public
13 opening of sealed bids or has not been prequalified for at least five
14 business days prior to that date. The district may require the
15 completed questionnaire and financial statement for
16 prequalification to be submitted more than 10 business days prior
17 to the fixed date for the public opening of sealed bids. The district
18 may also require the prequalification more than five business days
19 prior to the fixed date.

20 (g) (1) The board of the district may establish a process for
21 prequalifying prospective bidders pursuant to this section on a
22 quarterly or annual basis and a prequalification pursuant to this
23 process shall be valid for one calendar year following the date of
24 initial prequalification.

25 (2) The board shall establish a process to prequalify a person,
26 firm, or corporation, including, but not limited to, the prime
27 contractor and, if used, an electrical, mechanical, and plumbing
28 subcontractor, to construct a building described in Section 17406
29 or 17407 of the Education Code on a quarterly or annual basis. A
30 prequalification pursuant to this process shall be valid for one
31 calendar year following the date of initial prequalification.

32 (h) This section shall not preclude the governing board of the
33 district from prequalifying or disqualifying a subcontractor of any
34 specialty classification described in Section 7058 of the Business
35 and Professions Code.

36 (i) For purposes of this section, bidders shall include both of
37 the following:

38 (1) A prime contractor, as defined in Section 4113, that is either
39 of the following:

1 (A) A general engineering contractor described in Section 7056
2 of the Business and Professions Code.

3 (B) A general building contractor described in Section 7057 of
4 the Business and Professions Code.

5 (2) If utilized, each electrical, mechanical, and plumbing
6 contractor, whether as a prime contractor or as a subcontractor, as
7 defined in Section 4113.

8 (j) If a public project covered by this section includes electrical,
9 mechanical, or plumbing components that will be performed by
10 electrical, mechanical, or plumbing contractors, a list of
11 prequalified general contractors and electrical, mechanical, and
12 plumbing subcontractors shall be made available by the school
13 district to all bidders at least five business days prior to the dates
14 fixed for the public opening of sealed bids. The district may require
15 the list to be made available more than five business days prior to
16 the fixed dates for the public opening of sealed bids.

17 (k) For purposes of this section, electrical, mechanical, and
18 plumbing subcontractors are contractors licensed pursuant to
19 Section 7058 of the Business and Professions Code, specifically
20 contractors holding C-4, C-7, C-10, C-16, C-20, C-34, C-36, C-38,
21 C-42, C-43, and C-46 licenses, pursuant to regulations of the
22 Contractors' State License Board.

23 (l) This section shall not apply to a school district with an
24 average daily attendance of less than 2,500.

25 (m) ~~(1) Any public agency school district~~ requiring prospective
26 bidders to complete and submit questionnaires shall not disqualify
27 ~~or otherwise penalize~~ a prospective bidder through its uniform
28 system of rating bidders based ~~on either of the following:~~ *solely*
29 *on whether a prospective bidder has filed a claim against a project*
30 *owner through the courts, mediation, or arbitration.*

31 ~~(A) A prospective bidder is or has been involved in an~~
32 ~~affirmative claim filed by a project owner through the courts,~~
33 ~~mediation, or arbitration.~~

34 ~~(B) A prospective bidder has filed a claim through the courts,~~
35 ~~mediation, or arbitration against a project owner.~~

36 ~~(2) (A) For purposes of this subdivision, "affirmative claim"~~
37 ~~or "claim" does not include any claim based on a violation of the~~
38 ~~Labor Code.~~

39 ~~(B) Nothing in this subdivision precludes a public agency from~~
40 ~~including in its uniform system of rating bidders criteria related~~

1 ~~to affirmative claims that have been finally adjudicated or settled,~~
2 ~~provided the settlement or final judgment or award on the~~
3 ~~affirmative claim is greater than twenty percent of the adjusted~~
4 ~~contract amount against the prospective bidder.~~

5 (n) (1) This section shall apply only to contracts awarded on
6 or after January 1, 2014.

7 (2) The amendments made to this section by the act adding this
8 paragraph shall apply only to contracts awarded on or after January
9 1, 2015.

10 (o) (1) On or before January 1, 2018, the Director of Industrial
11 Relations shall (A) submit a report to the Legislature evaluating
12 whether, during the years this section has applied to contracts,
13 violations of the Labor Code on school district projects have
14 decreased as compared to the same number of years immediately
15 preceding the enactment of this section, and (B) recommend
16 improvements to the system for prequalifying contractors and
17 subcontractors on school district projects.

18 (2) A report to be submitted pursuant to this subdivision shall
19 be submitted in compliance with Section 9795 of the Government
20 Code.

21 (p) This section shall become inoperative on January 1, 2019,
22 and, as of July 1, 2019, is repealed.

23 SEC. 4. If the Commission on State Mandates determines that
24 this act contains costs mandated by the state, reimbursement to
25 local agencies and school districts for those costs shall be made
26 pursuant to Part 7 (commencing with Section 17500) of Division
27 4 of Title 2 of the Government Code.