

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2551

Introduced by Assembly Members ~~Gallagher and Olsen~~ *Gallagher, Olsen, and Salas*
(Principal coauthor: Senator Nielsen)

February 19, 2016

An act to add ~~Section 79714.5 to the Water Code, Article 60.6 (commencing with Section 20928) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code~~, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 2551, as amended, Gallagher. ~~Surface storage: design-build contracts. Contract procurement: surface storage projects.~~

The Local Agency Public Construction Act establishes procedures and requirements for contracting by local agencies for the construction of public works, including the requirement to award the contract to the lowest responsible bidder. Existing law governing specified water districts requires those districts to use competitive bidding and to award the contract to the lowest responsible bidder.

This bill would allow a local agency to use the construction management at-risk, design-build, public-private partnership, or design-build-operate method of delivery on a surface storage project, as described. The bill would require these contracts to be awarded on a best value basis or to the lowest responsible bidder, and establish a procurement process for these contracts. The bill would require the bidder to certify specified information under penalty of perjury. By expanding the crime of perjury, the bill would impose a state-mandated local program. The bill would also prohibit a contracting entity from

being prequalified or shortlisted unless it provides an enforceable commitment to the local agency that the entity and its subcontractors who will be doing construction on the project will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, as specified.

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 no reimbursement is required by this act for a specified reason.

~~Existing law, the Water Quality, Supply, and Infrastructure Improvement Act of 2014, approved by the voters as Proposition 1 at the November 4, 2014, statewide general election, authorizes the issuance of general obligation bonds in the amount of \$7,545,000,000 to finance a water quality, supply, and infrastructure improvement program. The bond act provides that the sum of \$2,700,000,000 is continuously appropriated from the fund to the California Water Commission for public benefits associated with water storage projects that improve the operation of the state water system, are cost effective, and provide a net improvement in ecosystem and water quality conditions:~~

~~This bill would authorize certain surface storage projects that receive Proposition 1 funding to use the design-build method of project delivery.~~

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

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

1 SECTION 1. Article 60.6 (commencing with Section 20928) is
2 added to Chapter 1 of Part 3 of Division 2 of the Public Contract
3 Code, to read:

4
5 Article 60.6. Surface Storage Projects

6
7 20928. The Legislature finds and declares that alternative
8 project delivery, using the best value procurement methodology,
9 has been authorized for various agencies that have reported
10 benefits from those projects, including reduced project costs,

1 expedited project completion, and design features that are not
2 achievable through the traditional design-bid-build method.

3 20928.1. (a) A surface storage project identified in the
4 CALFED Bay-Delta Program Record of Decision, dated August
5 28, 2000, that receives funding pursuant to Division 26.7
6 (commencing with Section 79703) of the Water Code may use the
7 following methods of project delivery:

8 (1) Construction management at-risk.

9 (2) Design-build.

10 (3) Public-private partnership.

11 (4) Design-build-operate.

12 (b) The contract shall be awarded on a best value basis or to
13 the lowest responsible bidder.

14 20928.2. The procurement process for the project shall
15 progress as follows:

16 (a) The local agency shall prepare a set of documents setting
17 forth the scope and estimated price of the project. The documents
18 may include, but need not be limited to, the size, type, and desired
19 design character of the project, performance specifications
20 covering the quality of materials, equipment, workmanship,
21 preliminary plans or building layouts, or any other information
22 deemed necessary to describe adequately the local agency's needs.
23 The performance specifications and any plans shall be prepared
24 by a design professional who is duly licensed and registered in
25 California.

26 (b) The local agency shall prepare and issue a request for
27 qualifications in order to prequalify or short-list the entities whose
28 bids shall be evaluated for final selection. The request for
29 qualifications shall include, but need not be limited to, the
30 following elements:

31 (1) Identification of the basic scope and needs of the project or
32 contract, the expected cost range, the methodology that will be
33 used by the local agency to evaluate bids, the procedure for final
34 selection of the bidder, and any other information deemed
35 necessary by the local agency to inform interested parties of the
36 contracting opportunity.

37 (2) Significant factors that the local agency reasonably expects
38 to consider in evaluating qualifications, including technical design,
39 construction expertise, acceptable safety records, and all other
40 nonprice-related factors.

1 (3) *A standard template request for statements of qualifications*
2 *prepared by the local agency. In preparing the standard template,*
3 *the local agency may consult with the construction industry, the*
4 *building trades and surety industry, and other local agencies*
5 *interested in using the authorization provided by this article. The*
6 *template shall require all of the following information:*

7 (A) *If the bidder is a privately held corporation, limited liability*
8 *company, partnership, or joint venture, a listing of all of the*
9 *shareholders, partners, or members known at the time of statement*
10 *of qualification submission who will perform work on the project.*

11 (B) *Evidence that the members of the contracting team have*
12 *completed, or demonstrated the experience, competency, capability,*
13 *and capacity to complete, projects of similar size, scope, or*
14 *complexity and that proposed key personnel have sufficient*
15 *experience and training to competently manage and complete the*
16 *project, and a financial statement that ensures that the bidder has*
17 *the capacity to complete the project.*

18 (C) *The licenses, registration, and credentials required for the*
19 *project, including, but not limited to, information on the revocation*
20 *or suspension of any license, credential, or registration.*

21 (D) *Evidence that establishes that the bidder has the capacity*
22 *to obtain all required payment and performance bonding, liability*
23 *insurance, and errors and omissions insurance.*

24 (E) *Information concerning workers' compensation experience*
25 *history and a worker safety program.*

26 (F) *An acceptable safety record. A bidder's safety record shall*
27 *be deemed acceptable if its experience modification rate for the*
28 *most recent three-year period is an average of 1.00 or less, and*
29 *its average total recordable injury or illness rate and average lost*
30 *work rate for the most recent three-year period does not exceed*
31 *the applicable statistical standards for its business category or if*
32 *the bidder is a party to an alternative dispute resolution system*
33 *as provided for in Section 3201.5 of the Labor Code.*

34 (4) *The information required under this subdivision shall be*
35 *certified under penalty of perjury by the bidder and its general*
36 *partners or joint venture members.*

37 (c) *A contracting entity shall not be prequalified or shortlisted*
38 *unless the entity provides an enforceable commitment to the local*
39 *agency that the entity and its subcontractors who will be doing*
40 *construction on the project will use a skilled and trained workforce*

1 to perform all work on the project or contract that falls within an
2 apprenticeable occupation in the building and construction trades
3 in effect at the time the request for qualifications is issued.

4 (1) For purposes of this subdivision:

5 (A) "Apprenticeable occupation" means an occupation for
6 which the chief had approved an apprenticeship program pursuant
7 to Section 3075 of the Labor Code prior to January 1, 2014.

8 (B) "Skilled and trained workforce" means a workforce that
9 meets all of the following conditions:

10 (i) All the workers are either skilled journeypersons or
11 apprentices registered in an apprenticeship program approved by
12 the Chief of the Division of Apprenticeship Standards.

13 (ii) (I) At the start of construction, at least 20 percent of the
14 skilled journeypersons employed to perform work on the contract
15 or project by the bidder and each of its subcontractors at every
16 tier are graduates of an apprenticeship program for the applicable
17 occupation that was either approved by the Chief of the Division
18 of Apprenticeship Standards pursuant to Section 3075 of the Labor
19 Code or located outside California and approved for federal
20 purposes pursuant to the apprenticeship regulations adopted by
21 the federal Secretary of Labor.

22 (II) By the second year of construction, and every year
23 thereafter, the workforce requirements of subclause (I) shall
24 increase by 10 percent until at least 50 percent of skilled
25 journeypersons employed to perform work on the contract or
26 project by the bidder and each of its subcontractors at every tier
27 are graduates of an apprenticeship program for the applicable
28 occupation that was either approved by the Chief of the Division
29 of Apprenticeship Standards pursuant to Section 3075 of the Labor
30 Code or located outside California and approved for federal
31 purposes pursuant to the apprenticeship regulations adopted by
32 the federal Secretary of Labor.

33 (iii) For an apprenticeable occupation in which no
34 apprenticeship program had been approved by the chief prior to
35 January 1, 1995, up to one-half of the graduation percentage
36 requirements of clause (ii) may be satisfied by skilled
37 journeypersons who commenced working in the apprenticeable
38 occupation prior to the chief's approval of an apprenticeship
39 program for that occupation in the county in which the project is
40 located.

1 (C) “Skilled journeyperson” means a worker who either:
 2 (i) Graduated from an apprenticeship program for the
 3 applicable occupation that was approved by the chief or located
 4 outside California and approved for federal purposes pursuant to
 5 the apprenticeship regulations adopted by the federal Secretary
 6 of Labor.
 7 (ii) Has at least as many hours of on-the-job experience in the
 8 applicable occupation as would be required to graduate from an
 9 apprenticeship program for the applicable occupation that is
 10 approved by the chief.
 11 (2) An entity’s commitment that a skilled and trained workforce
 12 will be used to perform the project or contract may be established
 13 by any of the following:
 14 (A) The entity’s agreement with the local agency that the entity
 15 and its subcontractors at every tier will comply with this
 16 subdivision and that the entity will provide the local agency with
 17 evidence, on a monthly basis while the project or contract is being
 18 performed, that the entity and its subcontractors are complying
 19 with the requirements of this subdivision.
 20 (B) If the local agency has entered into a project labor
 21 agreement that will bind all contractors and subcontractors
 22 performing work on the project or contract and that includes the
 23 requirements of this subdivision, the entity’s agreement that it will
 24 become a party to that project labor agreement.
 25 (C) Evidence that the entity has entered into a project labor
 26 agreement or equivalent document that includes the requirements
 27 of this subdivision and that will bind the bidder and all its
 28 subcontractors who performed construction work on the project.
 29 (d) The local agency shall make the list of prequalified entities
 30 available to the public.
 31 (e) Based on the documents prepared as described in subdivision
 32 (a), the local agency shall prepare a request for bids that invites
 33 prequalified or short-listed entities to submit competitive sealed
 34 bids in the manner prescribed by the local agency. The request
 35 for bids shall include, but need not be limited to, all of the following
 36 elements:
 37 (1) Identification of the basic scope and needs of the project or
 38 contract, the estimated cost of the project, the methodology that
 39 will be used by the local agency to evaluate bids, whether the
 40 contract will be awarded on the basis of best value or to the lowest

1 *responsible bidder, and any other information deemed necessary*
2 *by the local agency to inform interested parties of the contracting*
3 *opportunity.*

4 (2) *Significant factors that the local agency reasonably expects*
5 *to consider in evaluating bids, including, but not limited to, cost*
6 *or price and all nonprice-related factors.*

7 (3) *The relative importance or the weight assigned to each of*
8 *the factors identified in the request for bids.*

9 (4) *If a best value selection method is used, the local agency*
10 *may reserve the right to request bid revisions and hold discussions*
11 *and negotiations with responsive bidders, in which case the local*
12 *agency shall so specify in the request for bids and shall publish*
13 *separately or incorporate into the request for bids applicable*
14 *procedures to be observed by the local agency to ensure that any*
15 *discussions or negotiations are conducted in good faith.*

16 (f) *For those projects utilizing low bid as the final selection*
17 *method, the competitive bidding process shall result in lump-sum*
18 *bids by the prequalified or short-listed entities, and awards shall*
19 *be made to the bidder that is the lowest responsible bidder.*

20 (g) *For those projects utilizing best value as a selection method,*
21 *the competition shall progress as follows:*

22 (1) *Competitive bids shall be evaluated by using only the criteria*
23 *and selection procedures specifically identified in the request for*
24 *bids. The following minimum factors, however, shall be weighted*
25 *as deemed appropriate by the local agency:*

26 (A) *Price, unless a stipulated sum is specified and including*
27 *financial and bonding capacity requirements.*

28 (B) *Technical design, procurement, and construction expertise.*

29 (C) *Proposed construction approach, sequencing, and methods.*

30 (D) *Compliance with the requirements of the owner-provided*
31 *performance specification.*

32 (E) *Ability to meet the milestone schedule dates and, if*
33 *applicable, any liquidated damages.*

34 (F) *Ability to meet the quality requirements.*

35 (G) *Proposed risk allocation and sharing.*

36 (H) *Safety record.*

37 (I) *Warranty.*

38 (J) *Lifecycle costs over 15 or more years as specified by the*
39 *local agency.*

1 (2) Pursuant to subdivision (d), the local agency may hold
2 discussions or negotiations with responsive bidders using the
3 process articulated in the local agency’s request for bids.

4 (3) When the evaluation is complete, the responsive bidders
5 shall be ranked based on a determination of value provided by the
6 local agency if no more than three bidders are required to be
7 ranked.

8 (4) The award of the contract shall be made to the responsible
9 bidder whose bid is determined by the local agency to have offered
10 the best value to the public.

11 (5) Notwithstanding any provision of the Water Code, upon
12 issuance of a contract award the local agency shall publicly
13 announce its award, identifying the bidder to which the award is
14 made, along with a statement regarding the basis of the award.

15 (6) The statement regarding the local agency’s contract award,
16 described in paragraph (5), and the contract file shall provide
17 sufficient information to satisfy an external audit.

18 20928.3. (a) The local agency, in each request for proposals,
19 may identify specific types of subcontractors that must be included
20 in the entity statement of qualifications and proposal.

21 (b) Following award of the contract, the entity shall proceed
22 as follows in awarding construction subcontracts with a value
23 exceeding one-half of 1 percent of the contract price allocable to
24 construction work:

25 (1) Provide public notice of availability of work to be
26 subcontracted in accordance with the publication requirements
27 applicable to the competitive bidding process of the local agency,
28 including a fixed date and time on which qualification statements,
29 bids, or proposals will be due.

30 (2) Establish reasonable qualification criteria and standards.

31 (3) Award the subcontract either on a best value basis or to the
32 lowest responsible bidder. The process may include
33 prequalification or short-listing. The foregoing process does not
34 apply to construction subcontractors listed in the original proposal.

35 SEC. 2. No reimbursement is required by this act pursuant to
36 Section 6 of Article XIII B of the California Constitution because
37 the only costs that may be incurred by a local agency or school
38 district will be incurred because this act creates a new crime or
39 infraction, eliminates a crime or infraction, or changes the penalty
40 for a crime or infraction, within the meaning of Section 17556 of

1 *the Government Code, or changes the definition of a crime within*
2 *the meaning of Section 6 of Article XIII B of the California*
3 *Constitution.*

4 SECTION 1. ~~Section 79714.5 is added to the Water Code, to~~
5 ~~read:~~

6 ~~79714.5. A surface storage project identified in the CALFED~~
7 ~~Bay-Delta Program Record of Decision, dated August 28, 2000,~~
8 ~~that receives funding pursuant to this division may use the~~
9 ~~design-build method of project delivery.~~

O