

AMENDED IN ASSEMBLY APRIL 27, 2016

AMENDED IN ASSEMBLY APRIL 5, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 2551

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

February 19, 2016

An act to add 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. 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 ~~short-listed~~ *short-listed* 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.

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. Article 60.6 (commencing with Section 20928)
2 is 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 benefits
10 from those projects, including reduced project costs, expedited
11 project completion, and design features that are not achievable
12 through the traditional design-bid-build method.

13 20928.1. (a) A surface storage project identified in the
14 CALFED Bay-Delta Program Record of Decision, dated August
15 28, 2000, that receives funding pursuant to Division 26.7
16 (commencing with Section 79703) of the Water Code may use the
17 following methods of project delivery:

- 18 (1) Construction management at-risk.
- 19 (2) Design-build.
- 20 ~~(3) Public-private partnership.~~
- 21 ~~(4)~~
- 22 (3) Design-build-operate.

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

3 20928.2. The procurement process for the project shall progress
4 as follows:

5 (a) The local agency shall prepare a set of documents setting
6 forth the scope and estimated price of the project. The documents
7 may include, but need not be limited to, the size, type, and desired
8 design character of the project, performance specifications covering
9 the quality of materials, equipment, workmanship, preliminary
10 plans or building layouts, or any other information deemed
11 necessary to describe adequately the local agency's needs. The
12 performance specifications and any plans shall be prepared by a
13 design professional who is duly licensed and registered in
14 California.

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

20 (1) Identification of the basic scope and needs of the project or
21 contract, the expected cost range, the methodology that will be
22 used by the local agency to evaluate bids, the procedure for final
23 selection of the bidder, and any other information deemed
24 necessary by the local agency to inform interested parties of the
25 contracting opportunity.

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

30 (3) A standard template request for statements of qualifications
31 prepared by the local agency. In preparing the standard template,
32 the local agency may consult with the construction industry, the
33 building trades and surety industry, and other local agencies
34 interested in using the authorization provided by this article. The
35 template shall require all of the following information:

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

1 (B) Evidence that the members of the contracting team have
2 completed, or demonstrated the experience, competency, capability,
3 and capacity to complete, projects of similar size, scope, or
4 complexity and that proposed key personnel have sufficient
5 experience and training to competently manage and complete the
6 project, and a financial statement that ensures that the bidder has
7 the capacity to complete the project.

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

11 (D) Evidence that establishes that the bidder has the capacity
12 to obtain all required payment and performance bonding, liability
13 insurance, and errors and omissions insurance.

14 (E) Information concerning workers’ compensation experience
15 history and a worker safety program.

16 (F) An acceptable safety record. A bidder’s safety record shall
17 be deemed acceptable if its experience modification rate for the
18 most recent three-year period is an average of 1.00 or less, and its
19 average total recordable injury or illness rate and average lost work
20 rate for the most recent three-year period does not exceed the
21 applicable statistical standards for its business category or if the
22 bidder is a party to an alternative dispute resolution system as
23 provided for in Section 3201.5 of the Labor Code.

24 (4) The information required under this subdivision shall be
25 certified under penalty of perjury by the bidder and its general
26 partners or joint venture members.

27 (c) A contracting entity shall not be prequalified or ~~shortlisted~~
28 *short-listed* unless the entity provides an enforceable commitment
29 to the local agency that the entity and its subcontractors who will
30 be doing construction on the project will use a skilled and trained
31 workforce to perform all work on the project or contract that falls
32 within an apprenticeable occupation in the building and
33 construction trades in effect at the time the request for
34 qualifications is issued.

35 (1) For purposes of this subdivision:

36 (A) “Apprenticeable occupation” means an occupation for which
37 the chief had approved an apprenticeship program pursuant to
38 Section 3075 of the Labor Code prior to January 1, 2014.

39 (B) “Skilled and trained workforce” means a workforce that
40 meets all of the following conditions:

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

4 (ii) (I) At the start of construction, at least 20 percent of the
5 skilled journeypersons employed to perform work on the contract
6 or project by the bidder and each of its subcontractors at every tier
7 are graduates of an apprenticeship program for the applicable
8 occupation that was either approved by the Chief of the Division
9 of Apprenticeship Standards pursuant to Section 3075 of the Labor
10 Code or located outside California and approved for federal
11 purposes pursuant to the apprenticeship regulations adopted by
12 the federal Secretary of Labor.

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

24 (iii) For an apprenticeable occupation in which no apprenticeship
25 program had been approved by the chief prior to January 1, 1995,
26 up to one-half of the graduation percentage requirements of clause
27 (ii) may be satisfied by skilled journeypersons who commenced
28 working in the apprenticeable occupation prior to the chief's
29 approval of an apprenticeship program for that occupation in the
30 county in which the project is located.

31 (C) "Skilled journeyperson" means a worker who either:

32 (i) Graduated from an apprenticeship program for the applicable
33 occupation that was approved by the chief or located outside
34 California and approved for federal purposes pursuant to the
35 apprenticeship regulations adopted by the federal Secretary of
36 Labor.

37 (ii) Has at least as many hours of on-the-job experience in the
38 applicable occupation as would be required to graduate from an
39 apprenticeship program for the applicable occupation that is
40 approved by the chief.

1 (2) An entity’s commitment that a skilled and trained workforce
2 will be used to perform the project or contract may be established
3 by any of the following:

4 (A) The entity’s agreement with the local agency that the entity
5 and its subcontractors at every tier will comply with this
6 subdivision and that the entity will provide the local agency with
7 evidence, on a monthly basis while the project or contract is being
8 performed, that the entity and its subcontractors are complying
9 with the requirements of this subdivision.

10 (B) If the local agency has entered into a project labor agreement
11 that will bind all contractors and subcontractors performing work
12 on the project or contract and that includes the requirements of
13 this subdivision, the entity’s agreement that it will become a party
14 to that project labor agreement.

15 (C) Evidence that the entity has entered into a project labor
16 agreement or equivalent document that includes the requirements
17 of this subdivision and that will bind the bidder and all its
18 subcontractors who performed construction work on the project.

19 (d) The local agency shall make the list of prequalified entities
20 available to the public.

21 (e) Based on the documents prepared as described in subdivision
22 (a), the local agency shall prepare a request for bids that invites
23 prequalified or short-listed entities to submit competitive sealed
24 bids in the manner prescribed by the local agency. The request for
25 bids shall include, but need not be limited to, all of the following
26 elements:

27 (1) Identification of the basic scope and needs of the project or
28 contract, the estimated cost of the project, the methodology that
29 will be used by the local agency to evaluate bids, whether the
30 contract will be awarded on the basis of best value or to the lowest
31 responsible bidder, and any other information deemed necessary
32 by the local agency to inform interested parties of the contracting
33 opportunity.

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

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

39 (4) If a best value selection method is used, the local agency
40 may reserve the right to request bid revisions and hold discussions

1 and negotiations with responsive bidders, in which case the local
2 agency shall so specify in the request for bids and shall publish
3 separately or incorporate into the request for bids applicable
4 procedures to be observed by the local agency to ensure that any
5 discussions or negotiations are conducted in good faith.

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

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

12 (1) Competitive bids shall be evaluated by using only the criteria
13 and selection procedures specifically identified in the request for
14 bids. The following minimum factors, however, shall be weighted
15 as deemed appropriate by the local agency:

16 (A) Price, unless a stipulated sum is specified and including
17 financial and bonding capacity requirements.

18 (B) Technical design, procurement, and construction expertise.

19 (C) Proposed construction approach, sequencing, and methods.

20 (D) Compliance with the requirements of the owner-provided
21 performance specification.

22 (E) Ability to meet the milestone schedule dates and, if
23 applicable, any liquidated damages.

24 (F) Ability to meet the quality requirements.

25 (G) Proposed risk allocation and sharing.

26 (H) Safety record.

27 (I) Warranty.

28 (J) Lifecycle costs over 15 or more years as specified by the
29 local agency.

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

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

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

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

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

8 20928.3. (a) The local agency, in each request for proposals,
9 may identify specific types of subcontractors that must be included
10 in the entity statement of qualifications and proposal.

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

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

20 (2) Establish reasonable qualification criteria and standards.

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

25 SEC. 2. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.