

AMENDED IN SENATE AUGUST 2, 2016

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~~ *manager* at-risk, design-build, 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 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~~ *manager* at-risk.
- 19 (2) Design-build.
- 20 (3) Design-build-operate.
- 21 (b) The contract shall be awarded on a best value basis or to the
 22 lowest responsible bidder.

1 20928.2. The procurement process for the project shall progress
2 as follows:

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

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

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

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

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

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

38 (B) Evidence that the members of the contracting team have
39 completed, or demonstrated the experience, competency, capability,
40 and capacity to complete, projects of similar size, scope, or

1 complexity and that proposed key personnel have sufficient
2 experience and training to competently manage and complete the
3 project, and a financial statement that ensures that the bidder has
4 the capacity to complete the project.

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

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

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

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

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

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

31 (1) For purposes of this subdivision:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (4) If a best value selection method is used, the local agency
37 may reserve the right to request bid revisions and hold discussions
38 and negotiations with responsive bidders, in which case the local
39 agency shall so specify in the request for bids and shall publish
40 separately or incorporate into the request for bids applicable

1 procedures to be observed by the local agency to ensure that any
2 discussions or negotiations are conducted in good faith.

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

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

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

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

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

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

17 (D) Compliance with the requirements of the owner-provided
18 performance specification.

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

21 (F) Ability to meet the quality requirements.

22 (G) Proposed risk allocation and sharing.

23 (H) Safety record.

24 (I) Warranty.

25 (J) ~~Lifecycle~~ *Life-cycle* costs over 15 or more years as specified
26 by the local agency.

27 (2) Pursuant to subdivision ~~(d)~~, (e), the local agency may hold
28 discussions or negotiations with responsive bidders using the
29 process articulated in the local agency's request for bids.

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

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

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

1 (6) The statement regarding the local agency’s contract award,
2 described in paragraph (5), and the contract file shall provide
3 sufficient information to satisfy an external audit.
4 20928.3. (a) The local agency, in each request for proposals,
5 may identify specific types of subcontractors that must be included
6 in the entity statement of qualifications and proposal.
7 (b) Following award of the contract, the entity shall proceed as
8 follows in awarding construction subcontracts with a value
9 exceeding one-half of 1 percent of the contract price allocable to
10 construction work:
11 (1) Provide public notice of availability of work to be
12 subcontracted in accordance with the publication requirements
13 applicable to the competitive bidding process of the local agency,
14 including a fixed date and time on which qualification statements,
15 bids, or proposals will be due.
16 (2) Establish reasonable qualification criteria and standards.
17 (3) Award the subcontract either on a best value basis or to the
18 lowest responsible bidder. The process may include prequalification
19 or short-listing. The foregoing process does not apply to
20 construction subcontractors listed in the original proposal.
21 SEC. 2. No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.

O