

AMENDED IN SENATE AUGUST 19, 2016

AMENDED IN SENATE AUGUST 3, 2016

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**

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

February 19, 2016

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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 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 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 start and completion, simplified project controls and  
12 accountability, and design features that are not achievable through  
13 the traditional design-bid-build method.

14 20928.1. (a) A surface storage project identified in the  
15 CALFED Bay-Delta Program Record of Decision, dated August  
16 28, 2000, that receives funding pursuant to Division 26.7  
17 (commencing with Section 79700) of the Water Code may use, in  
18 addition to any other methods of project delivery otherwise  
19 allowable by irrigation-~~districts~~ *districts, county water districts,*

1 *or other similar water districts* by law, the following methods of  
2 project delivery:

3 (1) Construction manager at-risk.

4 (2) Design-Build, including conventional, progressive, and  
5 target price.

6 (3) Design-build-operate.

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

9 20928.2. The procurement process for the project shall progress  
10 as follows:

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

21 (b) The local agency shall prepare and issue a request for  
22 qualifications in order to prequalify or short-list the entities,  
23 including subcontractors and suppliers, whose bids shall be  
24 evaluated for final selection. The request for qualifications shall  
25 include, but need not be limited to, the following elements:

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

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

36 (3) A standard template request for statements of qualifications  
37 prepared by the local agency. In preparing the standard template,  
38 the local agency may consult with the construction industry, the  
39 building trades and surety industry, and other local agencies

1 interested in using the authorization provided by this article. The  
2 template shall require all of the following information:

3 (A) If the bidder is a privately held corporation, limited liability  
4 company, partnership, or joint venture, comprised of privately-held  
5 entities, a listing of all of the shareholders, partners, or members  
6 known at the time of statement of qualification submission who  
7 will perform work on the project.

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

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

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

21 (E) Information concerning workers' compensation experience  
22 history and a worker safety program.

23 (F) An acceptable safety record. ~~A bidder's safety record shall  
24 be deemed acceptable if its experience modification rate for the  
25 most recent three-year period is an average of 1.00 or less, and its  
26 average total recordable injury or illness rate and average lost work  
27 rate for the most recent three-year period does not exceed the  
28 applicable statistical standards for its business category or if the  
29 bidder is a party to an alternative dispute resolution system as  
30 provided for in Section 3201.5 of the Labor Code. "Safety record"  
31 means the prior history concerning the safe performance of  
32 construction contracts. The criteria used to evaluate a bidder's  
33 safety record shall include, at a minimum, its experience  
34 modification rate for the most recent three-year period, and its  
35 average total recordable injury or illness rate and average lost  
36 work rate for the most recent three-year period.~~

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

1 (c) A contracting entity shall not be prequalified or short-listed  
2 unless the entity provides an enforceable commitment to the local  
3 agency that the entity and its subcontractors will use a skilled and  
4 trained workforce to perform all work on the project or contract  
5 that falls within an apprenticeable occupation in the building and  
6 construction trades.

7 (1) For purposes of this subdivision:

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

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

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

16 (ii) ~~(I) At the start of construction,~~ *For work performed on or*  
17 *after January 1, 2017, at least 30 percent of the skilled*  
18 *journeypersons employed to perform work on the contract or*  
19 *project by the bidder and each of its subcontractors at every tier*  
20 *are graduates of an apprenticeship program for the applicable*  
21 *occupation that was either approved by the Chief of the Division*  
22 *of Apprenticeship Standards pursuant to Section 3075 of the Labor*  
23 *Code or located outside California and approved for federal*  
24 *purposes pursuant to the apprenticeship regulations adopted by*  
25 *the federal Secretary of Labor.*

26 ~~(II) By the second year of construction, and every year~~  
27 ~~thereafter, the workforce requirements of subclause (I) shall~~  
28 ~~increase by 10 percent until at least 60 percent of~~ *For work*  
29 *performed on or after January 1, 2018, at least 40 percent of the*  
30 *skilled journeypersons employed to perform work on the contract*  
31 *or project by the bidder and each of its subcontractors at every tier*  
32 *are graduates of an apprenticeship program for the applicable*  
33 *occupation that was either approved by the Chief of the Division*  
34 *of Apprenticeship Standards pursuant to Section 3075 of the Labor*  
35 *Code or located outside California and approved for federal*  
36 *purposes pursuant to the apprenticeship regulations adopted by*  
37 *the federal Secretary of Labor.*

38 *(III) For work performed on or after January 1, 2019, at least*  
39 *50 percent of the skilled journeypersons employed to perform work*  
40 *on the contract or project by the bidder and each of its*

1 *subcontractors at every tier are graduates of an apprenticeship*  
2 *program for the applicable occupation that was either approved*  
3 *by the Chief of the Division of Apprenticeship Standards pursuant*  
4 *to Section 3075 of the Labor Code or located outside California*  
5 *and approved for federal purposes pursuant to the apprenticeship*  
6 *regulations adopted by the federal Secretary of Labor.*

7 (IV) *For work performed on or after January 1, 2020, at least*  
8 *60 percent of the skilled journeypersons employed to perform work*  
9 *on the contract or project by the bidder and each of its*  
10 *subcontractors at every tier are graduates of an apprenticeship*  
11 *program for the applicable occupation that was either approved*  
12 *by the Chief of the Division of Apprenticeship Standards pursuant*  
13 *to Section 3075 of the Labor Code or located outside California*  
14 *and approved for federal purposes pursuant to the apprenticeship*  
15 *regulations adopted by the federal Secretary of Labor.*

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

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

24 (i) Graduated from an apprenticeship program for the applicable  
25 occupation that was approved by the chief or located outside  
26 California and approved for federal purposes pursuant to the  
27 apprenticeship regulations adopted by the federal Secretary of  
28 Labor.

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

33 (2) The apprenticeship graduation percentage requirements of  
34 subparagraph (B) of paragraph (1) are satisfied if, in a particular  
35 calendar month, either of the following is true:

36 (A) The required percentage of the skilled journeypersons  
37 employed by the contractor or subcontractor to perform work on  
38 the contract or project meet the graduation percentage requirement.

39 (B) For the hours of work performed by skilled journeypersons  
40 employed by the contractor or subcontractor on the contract or

1 project, the percentage of hours performed by skilled  
2 journeypersons who met the graduation requirement meets or  
3 exceeds the required graduation percentage.

4 (3) A contractor or subcontractor need not meet the  
5 apprenticeship graduation requirements of subparagraph (B) of  
6 paragraph (1) if, during the calendar month, the contractor or  
7 subcontractor employs skilled journeypersons to perform fewer  
8 than 10 hours of work on the contract or project.

9 (4) A subcontractor need not meet the apprenticeship graduation  
10 requirements of subparagraph (B) of paragraph (1) if both of the  
11 following requirements are met:

12 (A) The subcontractor was not a listed subcontractor under  
13 Section 4104 or a substitute for a listed subcontractor.

14 (B) The subcontract does not exceed one-half of 1 percent of  
15 the price of the prime contract.

16 (5) (A) A contractor, bidder, or other entity's commitment that  
17 a skilled and trained workforce will be used to perform the project  
18 or contract shall be established by the contractor, bidder, or other  
19 entity's agreement with the local agency that the contractor, bidder,  
20 or other entity and its subcontractors at every tier will comply with  
21 this subdivision and that the contractor, bidder, or other entity will  
22 provide the local agency with a report on a monthly basis while  
23 the project or contract is being performed, as to whether the  
24 contractor, bidder, or other entity and its subcontractors are  
25 complying with the requirements of this subdivision.

26 (B) If the contractor, bidder, or other entity fails to provide the  
27 monthly report required by this section, or provides a report that  
28 is incomplete, the local agency shall withhold further payments  
29 until a complete report is provided.

30 (C) If a monthly report does not demonstrate compliance with  
31 this chapter, the local agency shall withhold further payments until  
32 the contractor, bidder, or other entity provides a plan to achieve  
33 substantial compliance with this article, with respect to the relevant  
34 apprenticeable occupation, prior to completion of the contract or  
35 project.

36 (D) A monthly report provided to the public agency or other  
37 awarding body shall be a public record under the California Public  
38 Records Act (Chapter 3.5 (commencing with Section 6250) of  
39 Division 7 of Title 1 of the Government Code) and shall be open  
40 to public inspection.

1 (6) This subdivision shall not apply if the contractor, bidder, or  
2 other entity has entered into a project labor agreement that will  
3 bind itself and all its subcontractors who perform construction  
4 work on the project, and the contractor, bidder, or other entity  
5 agrees to be bound by the project agreement.

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

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

14 (1) Identification of the basic scope and needs of the project or  
15 contract, the estimated cost to perform the work being requested,  
16 the methodology that will be used by the local agency to evaluate  
17 bids, whether the contract will be awarded on the basis of best  
18 value or to the lowest responsible bidder, and any other information  
19 deemed necessary by the local agency to inform interested parties  
20 of the contracting opportunity.

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

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

26 (4) If a best value selection method is used, the local agency  
27 may reserve the right to request bid revisions and hold discussions  
28 and negotiations with responsive bidders, in which case the local  
29 agency shall so specify in the request for bids and shall publish  
30 separately or incorporate into the request for bids applicable  
31 procedures to be observed by the local agency to ensure that any  
32 discussions or negotiations are conducted in good faith.

33 (f) For those projects utilizing low bid as the final selection  
34 method, the competitive bidding process shall, if appropriate for  
35 the delivery method, result in lump-sum bids by the prequalified  
36 or short-listed entities, and awards shall be made to the bidder that  
37 is the lowest responsible bidder.

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



- 1 (1) Competitive bids shall be evaluated by using only the criteria  
2 and selection procedures specifically identified in the request for  
3 bids. The following minimum factors, however, shall be included,  
4 if applicable to the delivery method and weighted as deemed  
5 appropriate by the local agency:
- 6 (A) Price, unless a stipulated sum is specified and including  
7 financial and bonding capacity requirements.
  - 8 (B) Technical design, procurement, and construction expertise.
  - 9 (C) Proposed construction approach, sequencing, and methods.
  - 10 (D) Compliance with the requirements of the owner-provided  
11 performance specification.
  - 12 (E) Ability to meet the milestone schedule dates and, if  
13 applicable, any liquidated damages.
  - 14 (F) Ability to meet the quality requirements.
  - 15 (G) Proposed risk allocation and sharing.
  - 16 (H) Safety record.
  - 17 (I) Warranty.
  - 18 (J) Life-cycle costs over 15 or more years as specified by the  
19 local agency.
- 20 (2) Pursuant to subdivision (e), the local agency may hold  
21 discussions or negotiations with responsive bidders using the  
22 process articulated in the local agency's request for bids.
- 23 (3) When the evaluation is complete, the responsive bidders  
24 shall be ranked based on a determination of value provided by the  
25 local agency if no more than three bidders are required to be  
26 ranked.
- 27 (4) The award of the contract shall be made to the responsible  
28 bidder whose bid is determined by the local agency to have offered  
29 the best value to the public.
- 30 (5) Notwithstanding any provision of the Water Code, upon  
31 issuance of a contract award the local agency shall publicly  
32 announce its award, identifying the bidder to which the award is  
33 made, along with a statement regarding the basis of the award.
- 34 (6) The statement regarding the local agency's contract award,  
35 described in paragraph (5), and the contract file shall provide  
36 sufficient information to satisfy an external audit.
- 37 20928.3. (a) The local agency, in each request for proposals,  
38 may identify specific types of subcontractors that must be included  
39 in the entity statement of qualifications and proposal.

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

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

10 (2) Establish reasonable qualification criteria and standards.

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

15 20928.4. Any project constructed pursuant to this article shall  
16 be subject to Part 1 (commencing with Section 6000) of Division  
17 3 of the Water Code.

18 SEC. 2. No reimbursement is required by this act pursuant to  
19 Section 6 of Article XIII B of the California Constitution because  
20 the only costs that may be incurred by a local agency or school  
21 district will be incurred because this act creates a new crime or  
22 infraction, eliminates a crime or infraction, or changes the penalty  
23 for a crime or infraction, within the meaning of Section 17556 of  
24 the Government Code, or changes the definition of a crime within  
25 the meaning of Section 6 of Article XIII B of the California  
26 Constitution.