

AMENDED IN ASSEMBLY JULY 7, 2015

AMENDED IN SENATE MAY 12, 2015

AMENDED IN SENATE APRIL 28, 2015

AMENDED IN SENATE APRIL 15, 2015

**SENATE BILL**

**No. 762**

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**Introduced by Senator Wolk**

February 27, 2015

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An act to *amend Sections 10187.5 and 22161 of, and to add and repeal Article 3.7 (commencing with Section 20155) of Chapter 1 of Part 3 of Division 2-~~of of~~*, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, as amended, Wolk. ~~Counties: competitive~~ *Competitive bidding: best value: pilot program: program: design-build.*

The Local Agency Public Construction Act requires counties, among others, to comply with specified procedures for contracting for public works projects, including the use of a competitive bidding process and awarding contracts to the lowest responsible bidder. Existing law provides that specified provisions of the act applicable to public works contracts awarded by counties, as specified, do not apply to certain contracts by the County of Napa and the County of San Diego.

This bill would establish a pilot program to allow counties to select the lowest responsible bidder on the basis of best value, as defined, for construction projects in excess of \$1,000,000. The bill would establish procedures and criteria for the selection of a best value contractor. The bill would require that bidders verify specified information under oath, thereby imposing a state-mandated local program by creating a new

crime. The bill would require the board of supervisors of a participating county, before January 1, 2020, to submit a report to specified legislative committees. The bill would repeal ~~its~~ *the pilot program* provisions on January 1, 2020.

*Existing law, until January 1, 2025, authorizes the Department of General Services, the Department of Corrections and Rehabilitation, and certain local agencies to use the design-build procurement process for specified public works. Existing law defines “best value” for those purposes to mean a value determined by evaluation of objective criteria that may include, but are not limited to, price, features, functions, life-cycle costs, experience, and past performance.*

*This bill would modify that definition to have the objective criteria evaluated, instead, relate to those specific criteria.*

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. Section 10187.5 of the Public Contract Code is  
2     amended to read:

3     10187.5. For purposes of this article, the following definitions  
4     and the definitions in subdivision (a) of Section 13332.19 of the  
5     Government Code shall apply:

6     (a) “Best value” means a value determined by evaluation of  
7     objective criteria that ~~may include, but not be limited,~~ *relate* to  
8     price, features, functions, life-cycle costs, experience, and past  
9     performance. A best value determination may involve the selection  
10    of the lowest cost proposal meeting the interests of the department  
11    and meeting the objectives of the project, selection of the best  
12    proposal for a stipulated sum established by the procuring agency,  
13    or a tradeoff between price and other specified factors.

14    (b) “Construction subcontract” means each subcontract awarded  
15    by the design-build entity to a subcontractor that will perform work  
16    or labor or render service to the design-build entity in or about the  
17    construction of the work or improvement, or a subcontractor

1 licensed by the State of California that, under subcontract to the  
2 design-build entity, specially fabricates and installs a portion of  
3 the work or improvement according to detailed drawings contained  
4 in the plans and specifications produced by the design-build team.

5 (c) “Department” means the Department of General Services  
6 and the Department of Corrections and Rehabilitation.

7 (d) “Design-build” means a project delivery process in which  
8 both the design and construction of a project are procured from a  
9 single entity.

10 (e) “Design-build entity” means a corporation, limited liability  
11 company, partnership, joint venture, or other legal entity that is  
12 able to provide appropriately licensed contracting, architectural,  
13 and engineering services as needed pursuant to a design-build  
14 contract.

15 (f) “Design-build team” means the design-build entity itself and  
16 the individuals and other entities identified by the design-build  
17 entity as members of its team. Members shall include the general  
18 contractor and, if utilized in the design of the project, all electrical,  
19 mechanical, and plumbing contractors.

20 (g) “Director” means, with respect to procurements undertaken  
21 by the Department of General Services, the Director of General  
22 Services or, with respect to procurements undertaken by the  
23 Department of Corrections and Rehabilitation, the secretary of that  
24 department.

25 **SECTION 1.**

26 *SEC. 2.* Article 3.7 (commencing with Section 20155) is added  
27 to Chapter 1 of Part 3 of Division 2 of the Public Contract Code,  
28 to read:

29

30 Article 3.7. Best Value Construction Contracting for Counties  
31 Pilot Program

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33 20155. (a) This article provides for a pilot program for counties  
34 for construction projects in excess of one million dollars  
35 (\$1,000,000).

36 (b) The board of supervisors of any county shall let any contract  
37 for a construction project pursuant to this article to the lowest  
38 responsible bidder or else reject all bids.

39 (c) The lowest responsible bidder may be selected on the basis  
40 of the best value to a county. In order to implement this method

1 of selection, the board of supervisors shall adopt and publish  
2 procedures and required criteria that ensure that all selections are  
3 conducted in a fair and impartial manner. These procedures shall  
4 conform to Sections ~~20155.2 and 20155.3~~ to 20155.6, inclusive,  
5 and shall be mandatory for counties who choose to participate in  
6 the pilot program.

7 (d) If the board of supervisors deems it to be in the best interest  
8 of the county, the board of supervisors, on the refusal or failure of  
9 the successful bidder for a project to execute a tendered contract,  
10 may award it to the second lowest responsible bidder. If the second  
11 lowest responsible bidder fails or refuses to execute the contract,  
12 the board of supervisors may likewise award it to the third lowest  
13 responsible bidder.

14 20155.1. As used in this article:

15 (a) “Best value” means a procurement process whereby the  
16 lowest responsible bidder may be selected on the basis of objective  
17 criteria with the resulting selection representing the best  
18 combination of price and qualifications.

19 (b) “Best value contract” means a contract entered into pursuant  
20 to this article.

21 (c) “Best value contractor” means a properly licensed person,  
22 firm, or corporation that submits a bid for, or is awarded, a best  
23 value contract.

24 (d) “Demonstrated management competency” means the  
25 experience, competency, capability, and capacity of the proposed  
26 management staffing to complete projects of similar size, scope,  
27 or complexity.

28 (e) “Financial condition” means the financial resources needed  
29 to perform the contract. The criteria used to evaluate a bidder’s  
30 financial condition shall include, at a minimum, capacity to obtain  
31 all required payment bonds, performance bonds, and liability  
32 insurance.

33 (f) “Labor compliance” means the ability to comply with, and  
34 past performance with, contract and statutory requirements for the  
35 payment of wages and qualifications of the workforce. The criteria  
36 used to evaluate a bidder’s labor compliance shall include, as a  
37 minimum, the bidder’s ability to comply with the apprenticeship  
38 requirements of the California Apprenticeship Council and the  
39 Department of Industrial Relations, its past conformance with

1 those requirements, and its past conformance with requirements  
2 to pay prevailing wages on public works projects.

3 (g) “Qualifications” means the financial condition, relevant  
4 experience, demonstrated management competency, labor  
5 compliance, and safety record of the bidder, and, if required by  
6 the bidding documents, some or all of the preceding qualifications  
7 as they pertain to subcontractors proposed to be used by the bidder  
8 for designated portions of the work. A county shall evaluate  
9 financial condition, relevant experience, demonstrated management  
10 competency, labor compliance, and safety record, using, to the  
11 extent possible, quantifiable measurements.

12 (h) “Relevant experience” means the experience of the bidder  
13 with projects of similar size, scope, or complexity.

14 (i) “Safety record” means the prior history concerning the safe  
15 performance of construction contracts. The criteria used to evaluate  
16 a bidder’s safety record shall include, at a minimum, its experience  
17 modification rate for the most recent three-year period, and its  
18 average total recordable injury or illness rate and average lost work  
19 rate for the most recent three-year period.

20 *20155.2. As used in this article:*

21 (a) *“Apprenticeable occupation” means an occupation for*  
22 *which the Chief of the Division of Apprenticeship Standards had*  
23 *approved an apprenticeship program pursuant to Section 3075 of*  
24 *the Labor Code prior to January 1, 2014.*

25 (b) *“Skilled and trained workforce” means a workforce that*  
26 *meets all of the following conditions:*

27 (1) *All the workers are either skilled journeypersons or*  
28 *apprentices registered in an apprenticeship program approved by*  
29 *the chief.*

30 (2) (A) *As of January 1, 2016, at least 20 percent of the skilled*  
31 *journeypersons employed to perform work on the contract or*  
32 *project by the entity and each of its subcontractors at every tier*  
33 *are graduates of an apprenticeship program for the applicable*  
34 *occupation that was either approved by the Chief of the Division*  
35 *of Apprenticeship Standards pursuant to Section 3075 of the Labor*  
36 *Code or located outside California and approved for federal*  
37 *purposes pursuant to the apprenticeship regulations adopted by*  
38 *the federal Secretary of Labor.*

39 (B) *As of January 1, 2017, at least 30 percent of the skilled*  
40 *journeypersons employed to perform work on the contract or*

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

8 (C) *As of January 1, 2018, at least 40 percent of the skilled*  
9 *journeypersons employed to perform work on the contract or*  
10 *project by the entity and each of its subcontractors at every tier*  
11 *are graduates of an apprenticeship program for the applicable*  
12 *occupation that was either approved by the Chief of the Division*  
13 *of Apprenticeship Standards pursuant to Section 3075 of the Labor*  
14 *Code or located outside California and approved for federal*  
15 *purposes pursuant to the apprenticeship regulations adopted by*  
16 *the federal Secretary of Labor.*

17 (D) *As of January 1, 2019, at least 50 percent of the skilled*  
18 *journeypersons employed to perform work on the contract or*  
19 *project by the entity 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 (E) *As of January 1, 2020, at least 60 percent of the skilled*  
27 *journeypersons employed to perform work on the contract or*  
28 *project by the entity and each of its subcontractors at every tier*  
29 *are graduates of an apprenticeship program for the applicable*  
30 *occupation that was either approved by the Chief of the Division*  
31 *of Apprenticeship Standards pursuant to Section 3075 of the Labor*  
32 *Code or located outside California and approved for federal*  
33 *purposes pursuant to the apprenticeship regulations adopted by*  
34 *the federal Secretary of Labor.*

35 (F) *For an apprenticeable occupation in which no*  
36 *apprenticeship program had been approved by the chief prior to*  
37 *January 1, 1995, up to one-half of the graduation percentage*  
38 *requirements of subparagraph (B) may be satisfied by skilled*  
39 *journeypersons who commenced working in the apprenticeable*  
40 *occupation prior to the chief's approval of an apprenticeship*

1 *program for that occupation in the county in which the project is*  
2 *located.*

3 (c) *“Skilled journeyperson” means a worker who either:*

4 (1) *Graduated from an apprenticeship program for the*  
5 *applicable occupation that was approved by the chief or located*  
6 *outside California and approved for federal purposes pursuant to*  
7 *the apprenticeship regulations adopted by the federal Secretary*  
8 *of Labor.*

9 (2) *Has at least as many hours of on-the-job experience in the*  
10 *applicable occupation as would be required to graduate from an*  
11 *apprenticeship program for the applicable occupation that is*  
12 *approved by the chief.*

13 ~~20155.2.~~

14 20155.3. A county shall proceed in accordance with the  
15 following when awarding best value contracts under this article:

16 (a) A county shall not select a lowest responsible bidder on the  
17 basis of the best value to a county unless, after evaluating at a  
18 public meeting the alternative of awarding the contract on the basis  
19 of the lowest bid price, the county makes a written finding that  
20 awarding the contract on the basis of best value, for the specific  
21 project under consideration, will accomplish one or more of the  
22 following objectives: reducing project costs, expediting the  
23 completion of the project, or providing features not achievable  
24 through awarding the contract on the basis of the lowest bid price.

25 (b) A county shall prepare a solicitation for bids and give notice  
26 pursuant to Section 20125. A county may identify specific types  
27 of subcontractors that are required to be included in the bids. A  
28 county shall comply with Chapter 4 (commencing with Section  
29 4100) of Part 1 with regard to construction subcontractors identified  
30 in the bid.

31 (c) A county shall establish a procedure to prequalify bidders  
32 pursuant to Section 20101. The information required pursuant to  
33 this section shall be verified under oath by the bidder in the manner  
34 in which civil pleadings in civil actions are verified. Information  
35 submitted by the bidder as part of the evaluation process shall not  
36 be open to public inspection to the extent that information is  
37 exempt from disclosure under the California Public Records Act  
38 (Chapter 3.5 (commencing with Section 6250) of Division 7 of  
39 Title 1 of the Government Code).

40 (d) Each solicitation for bids shall do all of the following:

- 1 (1) Invite prequalified bidders to submit sealed bids in the
- 2 manner prescribed by this article.
- 3 (2) Include a section identifying and describing the following:
- 4 (A) Criteria that a county will consider in evaluating bids.
- 5 (B) The methodology and rating or weighting system that will
- 6 be used by a county in evaluating bids.
- 7 (C) The relative importance or weight assigned to the criteria
- 8 identified in the request for bids.
- 9 (e) Final evaluation of the best value contractor shall be done
- 10 in a manner that prevents cost or price information from being
- 11 revealed to the committee evaluating the qualifications of the
- 12 bidders prior to completion and announcement of that committee’s
- 13 decision.
- 14 *20155.4. (a) A best value entity shall not be prequalified or*
- 15 *shortlisted unless the entity provides an enforceable commitment*
- 16 *to the local agency that the entity and its subcontractors at every*
- 17 *tier will use a skilled and trained workforce to perform all work*
- 18 *on the project or contract that falls within an apprenticeable*
- 19 *occupation in the building and construction trades.*
- 20 *(b) An entity’s commitment that a skilled and trained workforce*
- 21 *will be used to perform the project or contract may be established*
- 22 *by any of the following:*
- 23 *(1) The entity’s agreement with the county that the entity and*
- 24 *its subcontractors at every tier will comply with the requirements*
- 25 *of this subdivision and that the entity will provide the county with*
- 26 *evidence, on a monthly basis while the project or contract is being*
- 27 *performed, that the entity and its subcontractors are complying*
- 28 *with the requirements of this subdivision.*
- 29 *(2) If the county has entered into a project labor agreement that*
- 30 *will bind all contractors and subcontractors performing work on*
- 31 *the project or contract, and that includes the requirements of this*
- 32 *subdivision, the entity’s agreement that it will become a party to*
- 33 *that project labor agreement.*
- 34 *(3) Evidence that the entity has entered into a project labor*
- 35 *agreement that includes the requirements of this section and that*
- 36 *will bind the entity and all its subcontractors at every tier*
- 37 *performing the project or contract.*
- 38 ~~20155.3.~~
- 39 *20155.5. Selection of the best value contractor shall be made*
- 40 *as follows:*

1 (a) (1) An evaluation committee appointed by the county shall  
2 evaluate the qualifications of the bidders based solely upon the  
3 criteria set forth in the solicitation documents, and shall assign a  
4 qualifications score to each bid.

5 (2) A county shall establish written policies and procedures,  
6 consistent with applicable law, to ensure that members of an  
7 evaluation committee are free from conflicts of interest, if the  
8 county has not already established applicable written policies and  
9 procedures.

10 (b) A county shall not award a contract for a construction project  
11 pursuant to this article if a solicitation for bids for that construction  
12 project results in the submission of fewer than three responsive  
13 bids to the county for evaluation.

14 (c) The award of the contract shall be made to the bidder whose  
15 bid is determined by a county, in writing, to be the best value to a  
16 county. To determine the best value contractor, the county shall  
17 divide each bidder's price by its qualifications score. The lowest  
18 resulting cost per quality point will represent the best value bid.

19 (d) A county shall issue a written decision of its contract award.

20 (e) Upon issuance of a contract award, a county shall publicly  
21 announce its award identifying the best value contractor to which  
22 the award is made, the project, the project price, and the selected  
23 best value contractor's score based on the evaluation criteria listed  
24 in the request for bids. The notice of award shall be made public  
25 and include the score of the selected best value contractor in  
26 relation to all other responsive bidders and their respective prices.  
27 The contract file shall include documentation sufficient to support  
28 the decision to award.

29 *20155.6. (a) If the county elects to award a project pursuant*  
30 *to this article, retention proceeds withheld by the district from the*  
31 *selected best value contractor shall not exceed 5 percent if a*  
32 *performance and payment bond, issued by an admitted surety*  
33 *insurer, is required in the solicitation of bids.*

34 *(b) In a contract between the selected best value contractor and*  
35 *a subcontractor, and in a contract between a subcontractor and*  
36 *any subcontractor thereunder, the percentage of the retention*  
37 *proceeds withheld shall not exceed the percentage specified in the*  
38 *contract between the district and the selected best value contractor.*  
39 *If the selected best value contractor provides written notice to a*  
40 *subcontractor that, prior to or at the time the bid is requested, a*

1 *bond may be required and the subcontractor subsequently is unable*  
2 *or refuses to furnish a bond to the selected best value contractor,*  
3 *then the selected best value contractor may withhold retention*  
4 *proceeds in excess of the percentage specified in the contract*  
5 *between the district and the selected best value contractor from*  
6 *any payment made by the selected best value contractor to the*  
7 *subcontractor.*

8 ~~20155.4.~~

9 20155.7. (a) Before January 1, 2020, the board of supervisors  
10 of a participating county shall submit a report to the appropriate  
11 policy committees of the Legislature and the Joint Legislative  
12 Budget Committee. The report shall include, but is not limited to,  
13 the following information:

14 (1) A description of the projects awarded using the best value  
15 procedures.

16 (2) The contract award amounts.

17 (3) The best value contractors awarded the projects.

18 (4) A description of any written protests concerning any aspect  
19 of the solicitation, bid, or award of the best value contracts,  
20 including the resolution of the protests.

21 (5) A description of the prequalification process.

22 (6) The criteria used to evaluate the bids, including the weighting  
23 of the criteria and an assessment of the effectiveness of the  
24 methodology.

25 (7) If a project awarded under this article has been completed,  
26 an assessment of the project performance, to include a summary  
27 of any delays or cost increases.

28 (b) A report submitted pursuant to subdivision (a) shall be  
29 submitted in compliance with Section 9795 of the Government  
30 Code.

31 ~~20155.5.~~

32 20155.8. Except as otherwise provided in this article, this article  
33 is not intended to change in any manner any guideline, criteria,  
34 procedure, or requirement of a county to let any contract for a  
35 project to the lowest responsible bidder or else reject all bids.

36 ~~20155.6.~~

37 20155.9. This article shall remain in effect only until January  
38 1, 2020, and as of that date is repealed.

39 *SEC. 3. Section 22161 of the Public Contract Code is amended*  
40 *to read:*

1 22161. For purposes of this chapter, the following definitions  
2 apply:

3 (a) “Best value” means a value determined by evaluation of  
4 objective criteria that ~~may include, but not be limited~~ *relate* to  
5 price, features, functions, life-cycle costs, experience, and past  
6 performance. A best value determination may involve the selection  
7 of the lowest cost proposal meeting the interests of the local agency  
8 and meeting the objectives of the project, selection of the best  
9 proposal for a stipulated sum established by the procuring agency,  
10 or a tradeoff between price and other specified factors.

11 (b) “Construction subcontract” means each subcontract awarded  
12 by the design-build entity to a subcontractor that will perform work  
13 or labor or render service to the design-build entity in or about the  
14 construction of the work or improvement, or a subcontractor  
15 licensed by the State of California that, under subcontract to the  
16 design-build entity, specially fabricates and installs a portion of  
17 the work or improvement according to detailed drawings contained  
18 in the plans and specifications produced by the design-build team.

19 (c) “Design-build” means a project delivery process in which  
20 both the design and construction of a project are procured from a  
21 single entity.

22 (d) “Design-build entity” means a corporation, limited liability  
23 company, partnership, joint venture, or other legal entity that is  
24 able to provide appropriately licensed contracting, architectural,  
25 and engineering services as needed pursuant to a design-build  
26 contract.

27 (e) “Design-build team” means the design-build entity itself  
28 and the individuals and other entities identified by the design-build  
29 entity as members of its team. Members shall include the general  
30 contractor and, if utilized in the design of the project, all electrical,  
31 mechanical, and plumbing contractors.

32 (f) “Local agency” means the following:

33 (1) A city, county, or city and county.

34 (2) A special district that operates wastewater facilities, solid  
35 waste management facilities, water recycling facilities, or fire  
36 protection facilities.

37 (3) Any transit district, included transit district, municipal  
38 operator, included municipal operator, any consolidated agency,  
39 as described in Section 132353.1 of the Public Utilities Code, any  
40 joint powers authority formed to provide transit service, any county

1 transportation commission created pursuant to Section 130050 of  
2 the Public Utilities Code, or any other local or regional agency,  
3 responsible for the construction of transit projects.

4 (g) (1) For a local agency defined in paragraph (1) of  
5 subdivision (f), “project” means the construction of a building or  
6 buildings and improvements directly related to the construction  
7 of a building or buildings, county sanitation wastewater treatment  
8 facilities, and park and recreational facilities, but does not include  
9 the construction of other infrastructure, including, but not limited  
10 to, streets and highways, public rail transit, or water resources  
11 facilities and infrastructure. For a local agency defined in paragraph  
12 (1) of subdivision (f) that operates wastewater facilities, solid waste  
13 management facilities, or water recycling facilities, “project” also  
14 means the construction of regional and local wastewater treatment  
15 facilities, regional and local solid waste facilities, or regional and  
16 local water recycling facilities.

17 (2) For a local agency defined in paragraph (2) of subdivision  
18 (f), “project” means the construction of regional and local  
19 wastewater treatment facilities, regional and local solid waste  
20 facilities, regional and local water recycling facilities, or fire  
21 protection facilities.

22 (3) For a local agency defined in paragraph (3) of subdivision  
23 (f), “project” means a transit capital project that begins a project  
24 solicitation on or after January 1, 2015. A “project,” as defined by  
25 this paragraph, that begins the solicitation process before January  
26 1, 2015, is subject to Article 6.8 (commencing with Section  
27 20209.5) of Chapter 1. “Project,” as defined by this paragraph,  
28 does not include state highway construction or local street and  
29 road projects.

30 ~~SEC. 2.~~

31 *SEC. 4.* No reimbursement is required by this act pursuant to  
32 Section 6 of Article XIII B of the California Constitution because  
33 the only costs that may be incurred by a local agency or school  
34 district will be incurred because this act creates a new crime or  
35 infraction, eliminates a crime or infraction, or changes the penalty  
36 for a crime or infraction, within the meaning of Section 17556 of  
37 the Government Code, or changes the definition of a crime within

1 the meaning of Section 6 of Article XIII B of the California  
2 Constitution.

O