

AMENDED IN ASSEMBLY AUGUST 17, 2015

AMENDED IN ASSEMBLY JULY 16, 2015

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

Introduced by Senator Wolk

February 27, 2015

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, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, as amended, Wolk. Competitive bidding: best value: pilot 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~~ a 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 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 relate to price, features, functions, life-cycle
8 costs, experience, and past performance. A best value determination
9 may involve the selection of the lowest cost proposal meeting the
10 interests of the department and meeting the objectives of the
11 project, selection of the best proposal for a stipulated sum
12 established by the procuring agency, or a tradeoff between price
13 and other specified factors.

1 (b) “Construction subcontract” means each subcontract awarded
2 by the design-build entity to a subcontractor that will perform work
3 or labor or render service to the design-build entity in or about the
4 construction of the work or improvement, or a subcontractor
5 licensed by the State of California that, under subcontract to the
6 design-build entity, specially fabricates and installs a portion of
7 the work or improvement according to detailed drawings contained
8 in the plans and specifications produced by the design-build team.

9 (c) “Department” means the Department of General Services
10 and the Department of Corrections and Rehabilitation.

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

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

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

24 (g) “Director” means, with respect to procurements undertaken
25 by the Department of General Services, the Director of General
26 Services or, with respect to procurements undertaken by the
27 Department of Corrections and Rehabilitation, the secretary of that
28 department.

29 SEC. 2. Article 3.7 (commencing with Section 20155) is added
30 to Chapter 1 of Part 3 of Division 2 of the Public Contract Code,
31 to read:

32

33 Article 3.7. Best Value Construction Contracting for Counties
34 Pilot Program

35

36 20155. (a) This article provides for a pilot program for counties
37 for construction projects in excess of one million dollars
38 (\$1,000,000).

39 (b) The board of supervisors of any county shall let any contract
40 for a construction project pursuant to this article to the ~~lowest~~

1 ~~responsible~~ bidder *representing the best value* or else reject all
2 bids.

3 (c) ~~The lowest responsible~~ bidder may be selected on the basis
4 of the best value to a county. In order to implement this method
5 of selection, the board of supervisors shall adopt and publish
6 procedures and required criteria that ensure that all selections are
7 conducted in a fair and impartial manner. These procedures shall
8 conform to Sections 20155.3 to 20155.6, inclusive, and shall be
9 mandatory for counties ~~who~~ *that* choose to participate in the pilot
10 program.

11 (d) If the board of supervisors deems it to be in the best interest
12 of the county, the board of supervisors, on the refusal or failure of
13 the successful bidder for a project to execute a tendered contract,
14 may award it to the ~~second lowest responsible bidder.~~ *bidder with*
15 *the second lowest best value score.* If the second ~~lowest responsible~~
16 bidder fails or refuses to execute the contract, the board of
17 supervisors may likewise award it to the ~~third lowest responsible~~
18 ~~bidder.~~ *bidder with the third lowest best value score.*

19 20155.1. As used in this article:

20 (a) “Best value” means a procurement process whereby the
21 ~~lowest responsible~~ *selected* bidder may be selected on the basis of
22 objective criteria *for evaluating the qualifications of bidders* with
23 the resulting selection representing the best combination of price
24 and qualifications.

25 (b) “Best value contract” means a *competitively bid* contract
26 entered into pursuant to this article.

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

30 (d) “Demonstrated management competency” means the
31 experience, competency, capability, and capacity of the proposed
32 management staffing to complete projects of similar size, scope,
33 or complexity.

34 (e) “Financial condition” means the financial resources needed
35 to perform the contract. The criteria used to evaluate a bidder’s
36 financial condition shall include, at a minimum, capacity to obtain
37 all required payment bonds, performance bonds, and liability
38 insurance.

39 (f) “Labor compliance” means the ability to comply with, and
40 past performance with, contract and statutory requirements for the

1 payment of wages and qualifications of the workforce. The criteria
2 used to evaluate a bidder’s labor compliance shall include, as a
3 minimum, the bidder’s ability to comply with the apprenticeship
4 requirements of the California Apprenticeship Council and the
5 Department of Industrial Relations, its past conformance with
6 those requirements, and its past conformance with requirements
7 to pay prevailing wages on public works projects.

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

17 (h) “Relevant experience” means ~~the experience of the bidder~~
18 ~~with experience, competency, capability, and capacity to complete~~
19 projects of similar size, scope, or complexity.

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

26 20155.2. As used in this article:

27 (a) “Apprenticeable occupation” means an occupation for which
28 the Chief of the Division of Apprenticeship Standards had approved
29 an apprenticeship program pursuant to Section 3075 of the Labor
30 Code prior to January 1, 2014.

31 (b) “Skilled and trained workforce” means a workforce that
32 meets all of the following conditions:

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

36 (2) (A) As of January 1, 2016, at least 20 percent of the skilled
37 journeypersons employed to perform work on the contract or
38 project by the entity and each of its subcontractors at every tier
39 are graduates of an apprenticeship program for the applicable
40 occupation that was either approved by the Chief of the Division

1 of Apprenticeship Standards pursuant to Section 3075 of the Labor
2 Code or located outside California and approved for federal
3 purposes pursuant to the apprenticeship regulations adopted by
4 the ~~federal~~ *United States* Secretary of Labor.

5 (B) As of January 1, 2017, at least 30 percent of the skilled
6 journeypersons employed to perform work on the contract or
7 project by the entity and each of its subcontractors at every tier
8 are graduates of an apprenticeship program for the applicable
9 occupation that was either approved by the Chief of the Division
10 of Apprenticeship Standards pursuant to Section 3075 of the Labor
11 Code or located outside California and approved for federal
12 purposes pursuant to the apprenticeship regulations adopted by
13 the ~~federal~~ *United States* Secretary of Labor.

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

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

32 (E) As of January 1, 2020, at least 60 percent of the skilled
33 journeypersons employed to perform work on the contract or
34 project by the entity and each of its subcontractors at every tier
35 are graduates of an apprenticeship program for the applicable
36 occupation that was either approved by the Chief of the Division
37 of Apprenticeship Standards pursuant to Section 3075 of the Labor
38 Code or located outside California and approved for federal
39 purposes pursuant to the apprenticeship regulations adopted by
40 the ~~federal~~ *United States* Secretary of Labor.

1 (F) For an apprenticeable occupation in which no apprenticeship
2 program had been approved by the Chief of the Division of
3 Apprenticeship Standards prior to January 1, 1995, up to one-half
4 of the graduation percentage requirements of subparagraphs (A)
5 through (E), inclusive, may be satisfied by skilled journeypersons
6 who commenced working in the apprenticeable occupation prior
7 to the chief’s approval of an apprenticeship program for that
8 occupation in the county in which the project is located.

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

10 (1) Graduated from an apprenticeship program for the applicable
11 occupation that was approved by the Chief of the Division of
12 Apprenticeship Standards or located outside California and
13 approved for federal purposes pursuant to the apprenticeship
14 regulations adopted by the ~~federal~~ *United States* Secretary of Labor.

15 (2) Has at least as many hours of on-the-job experience in the
16 applicable occupation as would be required to graduate from an
17 apprenticeship program for the applicable occupation that is
18 approved by the Chief of the Division of Apprenticeship Standards.

19 20155.3. A county shall proceed in accordance with the
20 following when awarding best value contracts under this article:

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

30 (b) A county shall prepare a solicitation for bids and give notice
31 pursuant to Section 20125. A county may identify specific types
32 of subcontractors that are required to be included in the bids. A
33 county shall comply with Chapter 4 (commencing with Section
34 4100) of Part 1 with regard to construction subcontractors identified
35 in the bid.

36 (c) A county shall establish a procedure to prequalify bidders
37 pursuant to Section 20101. The information required pursuant to
38 this section shall be verified under oath by the bidder in the manner
39 in which civil pleadings in civil actions are verified. Information
40 submitted by the bidder as part of the evaluation process shall not

1 be open to public inspection to the extent that information is
2 exempt from disclosure under the California Public Records Act
3 (Chapter 3.5 (commencing with Section 6250) of Division 7 of
4 Title 1 of the Government Code).

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

6 (1) Invite prequalified bidders to submit sealed bids in the
7 manner prescribed by this article.

8 (2) Include a section identifying and describing the following:

9 (A) Criteria that a county will consider in evaluating bids.

10 (B) The methodology and rating or weighting system that will
11 be used by a county in evaluating bids.

12 (C) The relative importance or weight assigned to the criteria
13 identified in the request for bids.

14 (e) Final evaluation of the best value contractor shall be done
15 in a manner that prevents cost or price information from being
16 revealed to the committee evaluating the qualifications of the
17 bidders prior to completion and announcement of that committee's
18 decision.

19 20155.4. (a) A best value entity shall not be prequalified or
20 shortlisted unless the entity provides an enforceable commitment
21 to the local agency that the entity and its subcontractors at every
22 tier will use a skilled and trained workforce to perform all work
23 on the project or contract that falls within an apprenticeable
24 occupation in the building and construction trades.

25 (b) An entity's commitment that a skilled and trained workforce
26 will be used to perform the project or contract may be established
27 by any of the following:

28 (1) The entity's agreement with the county that the entity and
29 its subcontractors at every tier will comply with the requirements
30 of this section and that the entity will provide the county with
31 evidence, on a monthly basis while the project or contract is being
32 performed, that the entity and its subcontractors are complying
33 with the requirements of this section.

34 (2) If the county has entered into a project labor agreement that
35 will bind all contractors and subcontractors performing work on
36 the project or contract, and that includes the requirements of this
37 section, the entity's agreement that it will become a party to that
38 project labor agreement.

39 (3) Evidence that the entity has entered into a project labor
40 agreement that includes the requirements of this section and that

1 will bind the entity and all its subcontractors at every tier
2 performing the project or contract.

3 20155.5. Selection of the best value contractor shall be made
4 as follows:

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

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

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

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

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

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

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

38 (b) In a contract between the selected best value contractor and
39 a subcontractor, and in a contract between a subcontractor and any
40 subcontractor thereunder, the percentage of the retention proceeds

1 withheld shall not exceed the percentage specified in the contract
2 between the county and the selected best value contractor. If the
3 selected best value contractor provides written notice to a
4 subcontractor that, prior to or at the time the bid is requested, a
5 bond may be required and the subcontractor subsequently is unable
6 or refuses to furnish a bond to the selected best value contractor,
7 then the selected best value contractor may withhold retention
8 proceeds in excess of the percentage specified in the contract
9 between the county and the selected best value contractor from
10 any payment made by the selected best value contractor to the
11 subcontractor.

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

17 (1) A description of the projects awarded using the best value
18 procedures.

19 (2) The contract award amounts.

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

21 (4) A description of any written protests concerning any aspect
22 of the solicitation, bid, or award of the best value contracts,
23 including the resolution of the protests.

24 (5) A description of the prequalification process.

25 (6) The criteria used to evaluate the bids, including the weighting
26 of the criteria and an assessment of the effectiveness of the
27 methodology.

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

31 (b) A report submitted pursuant to subdivision (a) shall be
32 submitted in compliance with Section 9795 of the Government
33 Code.

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

38 20155.9. This article shall remain in effect only until January
39 1, 2020, and as of that date is repealed.

1 SEC. 3. Section 22161 of the Public Contract Code is amended
2 to read:

3 22161. For purposes of this chapter, the following definitions
4 apply:

5 (a) “Best value” means a value determined by evaluation of
6 objective criteria that relate to price, features, functions, life-cycle
7 costs, experience, and past performance. A best value determination
8 may involve the selection of the lowest cost proposal meeting the
9 interests of the local agency and meeting the objectives of the
10 project, selection of the best proposal for a stipulated sum
11 established by the procuring agency, or a tradeoff between price
12 and other specified factors.

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

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

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

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

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

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

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

39 (3) Any transit district, included transit district, municipal
40 operator, included municipal operator, any consolidated agency,

1 as described in Section 132353.1 of the Public Utilities Code, any
2 joint powers authority formed to provide transit service, any county
3 transportation commission created pursuant to Section 130050 of
4 the Public Utilities Code, or any other local or regional agency,
5 responsible for the construction of transit projects.

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

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

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

32 SEC. 4. No reimbursement is required by this act pursuant to
33 Section 6 of Article XIII B of the California Constitution because
34 the only costs that may be incurred by a local agency or school
35 district will be incurred because this act creates a new crime or
36 infraction, eliminates a crime or infraction, or changes the penalty
37 for a crime or infraction, within the meaning of Section 17556 of
38 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.

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