

Introduced by Senator LaraFebruary 8, 2016

An act to amend, repeal, and add Section 10507.7 of, and to add Section 10507.6 to, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 959, as introduced, Lara. University of California: contracts: bidding.

Existing provisions of the California Constitution provide that the University of California constitutes a public trust and require the university to be administered by the Regents of the University of California (regents), a corporation in the form of a board, with full powers of organization and government, subject to legislative control only for specified purposes, including such competitive bidding procedures as may be applicable to the university by statute for the letting of construction contracts, sales of real property, and purchasing of materials, goods, and services. Existing law requires the regents, except as provided, to let all contracts involving an expenditure of \$100,000 or more annually for goods and materials or services, excepting personal or professional services, to the lowest responsible bidder meeting certain specifications, or to reject all bids. Existing law, until January 1, 2018, also authorizes the bid evaluation and selection for these contracts to be determined by the best value.

This bill would, beginning January 1, 2018, require a bidder, to qualify as a lowest responsible bidder or best value awardee on contracts for specified services, among other requirements, to certify in writing to the University of California (UC) that the bid includes a total employee compensation package that is valued on a per-employee basis at a level

sufficient that it does not materially undercut the average per-employee value of total compensation for UC employees who perform comparable work at the relevant campus, medical center, or laboratory at which the bidder proposes to perform the work. The bill would also require the bidder to notify the UC of any changes in the submitted bid information during the performance of the contract and to submit an annual certified audit statement for the work performed under the contract. The bill would require the UC to include in its request for proposals a calculation of the average per-employee value of total compensation for UC employees who perform comparable work at the relevant location, as prescribed. The bill would, for these purposes, require contracts for services involving an expenditure of \$100,000 or more annually to include any renewals or extensions of the contract that would result in an expenditure of \$100,000 or more annually.

This bill would exclude specified employees and public works from these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) It is a matter of statewide concern that responsible
- 3 competitive bidding at the University of California become more
- 4 transparent than it is at present, in order that illegal and abusive
- 5 employment practices by contractors can be prevented and, if not
- 6 prevented, then brought to light and eliminated, with all victims
- 7 of wage theft made whole for their employers' violations.
- 8 (b) It is a matter of statewide concern that responsible
- 9 competitive bidding at the University of California not undercut
- 10 the wages and benefits provided by the University of California
- 11 for comparable work, given that a significant percentage of
- 12 University of California employees already are eligible for public
- 13 benefits and any material decrease in the compensation of
- 14 employees performing such work would result in materially
- 15 increased General Fund costs for the provision of benefits.
- 16 (c) It is a matter of statewide concern that the University of
- 17 California not repeat past instances in which public resources have
- 18 been squandered via contracting out to for-profit private contractors
- 19 that charge significant administrative overhead.

1 (d) In amending the Public Contracts Code to promote
2 responsible contracting at the University of California, it is
3 important to delay the amendments' effective date until January
4 1, 2018, in order to afford adequate preparatory time to the
5 university and to contractors intending to bid on university
6 contracts, as well as to lessen the cost of the amendments'
7 requirements by delaying their effect until after the university's
8 \$15 per hour minimum wage for contracted employees is fully in
9 effect.

10 SEC. 2. Section 10507.6 is added to the Public Contract Code,
11 to read:

12 10507.6. (a) For the purposes of this article, to qualify as a
13 lowest responsible bidder or best value awardee on any contract
14 for building maintenance, cleaning or custodial services, call center
15 services, dining and food services, gardening, grounds keeping
16 and plant nursery services, laborer services, mail room services,
17 parking, shuttle bus, or transportation services, security services,
18 storekeeper services, truck driving services, patient care technical
19 employee services, patient billing services, medical transcribing
20 services, patient escort services, or nursing assistant services a
21 bidder shall satisfy the requirements set forth in this section.

22 (b) (1) A bidder shall certify in writing to the University of
23 California that the bid includes a total employee compensation
24 package, including fringe benefits, that is valued on a per-employee
25 basis at a level sufficient that it does not undercut by more than 5
26 percent the average per-employee value of total compensation,
27 including fringe benefits, for employees of the University of
28 California who perform comparable work at the relevant campus,
29 medical center, or laboratory at which the bidder proposes to
30 perform the work.

31 (2) The University of California shall implement this section
32 by including in its request for proposals a calculation of the average
33 per-employee value of total compensation, including fringe
34 benefits, for employees of the University of California who perform
35 comparable work at the relevant campus, medical center, or
36 laboratory, and that calculation shall use all known cost escalators
37 to project the future rate of growth of average per-employee total
38 compensation costs.

39 (c) A bidder shall certify in writing to the University of
40 California that, within the prior 10 years, the bidder has not been

1 found liable for any violation of Section 484 of the Penal Code,
2 Sections 200 through 558, inclusive, 1197.5, or 2810.5 of the Labor
3 Code, or any Wage Order issued by the Industrial Welfare
4 Commission, in any amount totaling more than twenty thousand
5 dollars (\$20,000) or 0.3 percent of the bidder's most recent annual
6 gross revenue, whichever is less.

7 (d) A bidder shall provide all of the following to the University
8 of California, at the same time that it submits its bid:

9 (1) A spreadsheet showing, for each position and employee to
10 be supplied to the university or to perform work at any university
11 location, all applicable compensation and benefits to be offered,
12 including, but not limited to, base wage rates or salaries, leave
13 accrual rates, shift differentials, premium rates, bonus structures,
14 rates or systems, retirement contributions and programs, and
15 medical benefit programs and plans, including, but not limited to,
16 applicable deductibles, employee copayments, and employer and
17 employee shares of premiums for each tier and level of coverage
18 offered.

19 (2) A spreadsheet showing, for each position and employee to
20 be supplied to the university or to perform work at any university
21 location, the anticipated hours to be worked on a daily and weekly
22 basis.

23 (3) An organizational chart showing the bidder's supervisory
24 structure for the work to be performed.

25 (4) Any and all employee handbooks or other policies to be
26 applicable to employees performing contracted work for the
27 University of California.

28 (5) A projection showing, for all work performed for the
29 university, the bidder's projected total and itemized gross revenues,
30 and total and itemized expenses and net revenues for each of the
31 first three years of the proposed contract.

32 (e) A successful bidder shall, after it commences performing
33 work for the University of California, do all of the following:

34 (1) Notify the university of any changes to the information
35 provided in subdivisions (b), (c), and (d). That notification shall
36 be provided within 30 days of the change and shall fully specify
37 all information that has changed and the reasons for that change.
38 It shall constitute proper grounds for the university to terminate a
39 contract should a contractor notify the university that, within the
40 prior 10 years, the bidder has been found liable for any violation

1 of Section 484 of the Penal Code, Sections 200 through 558, 1197.5
2 or 2810.5 of the Labor Code, or any Wage Order issued by the
3 Industrial Welfare Commission, in any amount totaling more than
4 twenty thousand dollars (\$20,000) or 0.3 percent of the bidder's
5 most recent annual gross revenue, whichever is less.

6 (2) Provide the university with a copy of all notices provided
7 to employees pursuant to Section 2810.5 of the Labor Code before
8 those employees begin working at a University of California
9 campus, laboratory, or medical center.

10 (3) By no later than the 15th day of each month, provide the
11 university with a monthly certified payroll report covering all
12 employees who performed work at any university location during
13 the preceding month.

14 (4) Annually provide the university, by no later than October 1
15 of each year, with data showing compliance with Section 1197.5
16 of the Labor Code during the preceding fiscal year, for each job
17 classification performing work at any university location.

18 (5) Annually provide the university, by no later than October 1
19 of each year, an audited statement prepared and signed by a
20 certified public accountant showing, for all work performed for
21 the university during the preceding fiscal year, the bidder's total
22 and itemized gross revenues, and total and itemized expenses and
23 net revenues.

24 (f) All records provided by a bidder or contractor to the
25 university pursuant to this section shall be disclosed to any member
26 of the public making a request to the university under Section 6253
27 of the Government Code, provided that (1) the university shall
28 redact those portions of such records containing confidential
29 information within the meaning of subdivision (c) of Section 6254
30 of the Government Code, and (2) the university, in responding to
31 any request made during the course of a bid process that is not yet
32 complete, shall delay until after the bid process is complete before
33 disclosing any records containing materials submitted by a bidder.

34 (g) The requirements of this section shall not apply to employees
35 covered by Section 1191.5 of the Labor Code or subdivision (c)
36 of Section 214 of Title 29 of the United States Code. Any
37 employees covered by Section 1191.5 of the Labor Code or
38 subdivision (c) of Section 214 of Title 29 of the United States Code
39 shall be omitted from any and all certifications and disclosures
40 required by this article.

1 (h) This section does not apply to any work subject to Chapter
2 1 (commencing with Section 1720) of Part 7 of Division 2 of the
3 Labor Code.

4 (i) This section shall become operative January 1, 2018.

5 SEC. 3. Section 10507.7 of the Public Contract Code is
6 amended to read:

7 10507.7. (a) Except as provided for in this article, the Regents
8 of the University of California shall let all contracts involving an
9 expenditure of more than one hundred thousand dollars (\$100,000)
10 annually for goods and materials to be sold to the University of
11 California to the lowest responsible bidder meeting specifications,
12 or else reject all bids. Contracts for services to be performed, other
13 than personal or professional services, involving an expenditure
14 of one hundred thousand dollars (\$100,000) or more annually shall
15 be made or entered into with the lowest responsible bidder meeting
16 specifications, or else all bids shall be rejected. If the regents deem
17 it to be for the best interest of the university, the regents may, on
18 the refusal or failure of the successful bidder for materials, goods,
19 or services to execute a tendered contract, award it to the second
20 lowest responsible bidder meeting specifications. If the second
21 lowest responsible bidder fails or refuses to execute the contract,
22 the regents may likewise award it to the third lowest responsible
23 bidder meeting specifications.

24 (b) *This section shall remain in effect only until January 1, 2018,*
25 *and as of that date is repealed, unless a later enacted statute, that*
26 *is enacted before, deletes or extends that date.*

27 SEC. 4. Section 10507.7 is added to the Public Contract Code,
28 to read:

29 10507.7. (a) Except as provided for in this article, the Regents
30 of the University of California shall let all contracts involving an
31 expenditure of more than one hundred thousand dollars (\$100,000)
32 annually for goods and materials to be sold to the University of
33 California to the lowest responsible bidder meeting specifications,
34 or else reject all bids. Contracts for services to be performed, other
35 than personal or professional services, involving an expenditure
36 of one hundred thousand dollars (\$100,000) or more annually shall
37 be made or entered into with the lowest responsible bidder meeting
38 specifications, or else all bids shall be rejected. If the regents deem
39 it to be for the best interest of the university, the regents may, on
40 the refusal or failure of the successful bidder for materials, goods,

1 or services to execute a tendered contract, award it to the second
2 lowest responsible bidder meeting specifications. If the second
3 lowest responsible bidder fails or refuses to execute the contract,
4 the regents may likewise award it to the third lowest responsible
5 bidder meeting specifications.

6 (b) For the purposes of this section, contracts for services
7 involving an expenditure of one hundred thousand dollars
8 (\$100,000) or more annually shall include any renewal or extension
9 of an existing contract if the renewal or extension involves an
10 expenditure of one hundred thousand dollars (\$100,000) or more
11 annually.

12 (c) This section shall become operative on January 1, 2018.

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