

AMENDED IN SENATE MAY 31, 2016

SENATE BILL

No. 959

Introduced by Senator Lara

February 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 amended, 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, *would* 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 *provide any applicable collective bargaining agreements and 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.

1 (c) It is a matter of statewide concern that the University of
2 California not repeat past instances in which public resources have
3 been squandered via contracting out to for-profit private contractors
4 that charge significant administrative overhead.

5 (d) In amending the Public Contract Code to promote
6 responsible contracting at the University of California, it is
7 important to delay the amendments' effective date until January
8 1, 2018, in order to afford adequate preparatory time to the
9 university and to contractors intending to bid on university
10 contracts, as well as to lessen the cost of the amendments'
11 requirements by delaying their effect until after the university's
12 \$15 per hour minimum wage for contracted employees is fully in
13 effect.

14 SEC. 2. Section 10507.6 is added to the Public Contract Code,
15 to read:

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

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

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

1 to project the future rate of growth of average per-employee total
2 compensation costs.

3 (c) A bidder shall certify in writing to the University of
4 California that, within the prior ~~10~~ *five* years, the bidder has not
5 been found liable for any violation of Section 484 of the Penal
6 Code, Sections 200 through 558, inclusive, 1197.5, or 2810.5 of
7 the Labor Code, or any wage order issued by the Industrial Welfare
8 Commission, in any amount totaling more than twenty thousand
9 dollars (\$20,000) or 0.3 percent of the bidder's most recent annual
10 gross revenue, whichever is less.

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

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

23 ~~(2) A spreadsheet showing, for each position and employee to~~
24 ~~be supplied to the university or to perform work at any university~~
25 ~~location, the anticipated hours to be worked on a daily and weekly~~
26 ~~basis.~~

27 ~~(3)~~

28 (2) An organizational chart showing the bidder's supervisory
29 structure for the work to be performed.

30 ~~(4)~~

31 (3) Any *collective bargaining agreements, where applicable,*
32 and all employee handbooks or other policies to be applicable to
33 employees performing contracted work for the University of
34 California.

35 ~~(5) A projection showing, for all work performed for the~~
36 ~~university, the bidder's projected total and itemized gross revenues,~~
37 ~~and total and itemized expenses and net revenues for each of the~~
38 ~~first three years of the proposed contract.~~

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

1 (1) Notify the university of any changes to the information
2 provided in subdivisions (b), (c), and (d). That notification shall
3 be provided within 30 days of the change and shall fully specify
4 all information that has changed and the reasons for that change.
5 ~~It shall constitute proper grounds for the university to terminate a~~
6 ~~contract should a contractor notify the university that, within the~~
7 ~~prior 10 years, the bidder has been found liable for any violation~~
8 ~~of Section 484 of the Penal Code, Sections 200 through 558, 1197.5~~
9 ~~or 2810.5 of the Labor Code, or any Wage Order issued by the~~
10 ~~Industrial Welfare Commission, in any amount totaling more than~~
11 ~~twenty thousand dollars (\$20,000) or 0.3 percent of the bidder's~~
12 ~~most recent annual gross revenue, whichever is less.~~

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

17 ~~(3) By no later than the 15th day of each month, provide the~~
18 ~~university with a monthly certified payroll report covering all~~
19 ~~employees who performed work at any university location during~~
20 ~~the preceding month.~~

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

25 ~~(5) Annually provide the university, by no later than October 1~~
26 ~~of each year, an audited statement prepared and signed by a~~
27 ~~certified public accountant showing, for all work performed for~~
28 ~~the university during the preceding fiscal year, the bidder's total~~
29 ~~and itemized gross revenues, and total and itemized expenses and~~
30 ~~net revenues.~~

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

1 (g) The requirements of this section shall not apply to employees
2 covered by Section 1191.5 of the Labor Code or subdivision (c)
3 of Section 214 of Title 29 of the United States Code. Any
4 employees covered by Section 1191.5 of the Labor Code or
5 subdivision (c) of Section 214 of Title 29 of the United States Code
6 shall be omitted from any and all certifications and disclosures
7 required by this article.

8 (h) This section does not apply to any work subject to Chapter
9 1 (commencing with Section 1720) of Part 7 of Division 2 of the
10 Labor Code.

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

12 SEC. 3. Section 10507.7 of the Public Contract Code is
13 amended to read:

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

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

34 SEC. 4. Section 10507.7 is added to the Public Contract Code,
35 to read:

36 10507.7. (a) Except as provided for in this article, the Regents
37 of the University of California shall let all contracts involving an
38 expenditure of more than one hundred thousand dollars (\$100,000)
39 annually for goods and materials to be sold to the University of
40 California to the lowest responsible bidder meeting specifications,

1 or else reject all bids. Contracts for services to be performed, other
2 than personal or professional services, involving an expenditure
3 of one hundred thousand dollars (\$100,000) or more annually shall
4 be made or entered into with the lowest responsible bidder meeting
5 specifications, or else all bids shall be rejected. If the regents deem
6 it to be for the best interest of the university, the regents may, on
7 the refusal or failure of the successful bidder for materials, goods,
8 or services to execute a tendered contract, award it to the second
9 lowest responsible bidder meeting specifications. If the second
10 lowest responsible bidder fails or refuses to execute the contract,
11 the regents may likewise award it to the third lowest responsible
12 bidder meeting specifications.

13 (b) For the purposes of this section, contracts for services
14 involving an expenditure of one hundred thousand dollars
15 (\$100,000) or more annually shall include any renewal or extension
16 of an existing contract if the renewal or extension involves an
17 expenditure of one hundred thousand dollars (\$100,000) or more
18 annually.

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