

Senate Bill No. 959

Passed the Senate August 30, 2016

Secretary of the Senate

Passed the Assembly August 18, 2016

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 any 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, as defined.

This bill, 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 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.

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

SECTION 1. The Legislature finds and declares the following:

(a) It is a matter of statewide concern that responsible competitive bidding at the University of California become more transparent than it is at present, in order that illegal and abusive employment practices by contractors can be prevented and, if not prevented, then brought to light and eliminated, with all victims of wage theft made whole for their employers' violations.

(b) It is a matter of statewide concern that responsible competitive bidding at the University of California not undercut the wages and benefits provided by the University of California for comparable work, given that a significant percentage of University of California employees already are eligible for public benefits and any material decrease in the compensation of employees performing such work would result in materially increased General Fund costs for the provision of benefits.

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

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

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

10507.6. (a) For the purposes of this article, to qualify as a lowest responsible bidder or best value awardee on any contract

for building maintenance, cleaning or custodial services, call center services, dining and food services, gardening, grounds keeping and plant nursery services, laborer services, mail room services, parking, shuttle bus, or transportation services, security services, storekeeper services, truck driving services, patient care technical employee services, patient billing services, medical transcribing services, patient escort services, or nursing assistant services a bidder shall satisfy the requirements set forth in this section.

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

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

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

(d) All records provided by a bidder or contractor to the university pursuant to this section shall be disclosed to any member of the public making a request to the university under Section 6253 of the Government Code, provided that (1) the university shall redact those portions of such records containing confidential information within the meaning of subdivision (c) of Section 6254 of the Government Code, and (2) the university, in responding to

any request made during the course of a bid process that is not yet complete, shall delay until after the bid process is complete before disclosing any records containing materials submitted by a bidder.

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

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

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

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

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

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

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

10507.7. (a) Except as provided for in this article, the Regents of the University of California shall let all contracts involving an

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

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

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

Approved _____, 2016

Governor