

Assembly Bill No. 2182

CHAPTER 292

An act to amend Section 10126 of, to add Section 10780.5 to, and to add Article 1.3 (commencing with Section 20103.8) to Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to public contracts.

[Approved by Governor September 1, 2000. Filed with Secretary of State September 5, 2000.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2182, Mazzoni. Bidding procedures: alternative bids.

Existing law establishes procedures for competitive bidding of certain contracts by public entities, and permits designated state officials to approve cost estimates that contain additions to or deletions from the base bid.

This bill would revise procedures affecting state contracts to prescribe procedures for determining the lowest bidder if additions or deletions from the base bid are considered. The bill would also authorize local agencies and the Trustees of the California State University to include alternatives that may be added to or deleted from the final bid award for a project, and would specify how those alternatives shall be considered in determining who is the lowest responsible bidder.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Because the dollar amount of the lowest bid is not known until the bids are received and opened on bid day, and because the amount of money available for public works projects is limited, public entities need the budgetary flexibility afforded by allowing them to list items on which bidders must provide bid prices, but which may or may not be added to, or deleted from, the contract, depending upon the availability of funds.

(b) Selective use of additive and deductive bid items to determine the lowest responsible bidder can violate the public policies described in subdivisions (c) and (d) of Section 100 of the Public Contract Code.

(c) The public policies described in subdivisions (c) and (d) of Section 100 of the Public Contract Code can be satisfied by a process in which additive and deductive bid items are selectively used to determine the lowest monetary bidder after the bids are received, if



no information that would identify any of the bidders is revealed to the public entity before the lowest monetary bidder is determined.

SEC. 2. Section 10126 of the Public Contract Code is amended to read:

10126. Notwithstanding the provisions of Section 10125, the estimate of cost may be approved by the director, which includes alternates contemplating additions to, or deletions from, the base bid, provided that all of the following requirements are met:

(a) Estimates are made for each contingency and, in the aggregate, such alternates do not exceed 10 percent of the estimated cost for the project.

(b) The available funds are at least sufficient to cover the filed estimate for the base project.

(c) Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by paragraph (1) will be used:

(1) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(2) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(3) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items, depending upon available funds as identified in the solicitation.

(4) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

(d) The contract is awarded to the lowest bidder, as determined by the method prescribed in subdivision (c).

(e) A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the public entity from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

SEC. 3. Section 10780.5 is added to the Public Contract Code, to read:

10780.5. The trustees may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a



bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order from a specifically identified list of those items, depending upon available funds as identified in the solicitation.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the trustees from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

SEC. 4. Article 1.3 (commencing with Section 20103.8) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 1.3. Award of Contracts

20103.8. A local agency may require a bid for a public works contract to include prices for items that may be added to, or deducted from, the scope of work in the contract for which the bid is being submitted. Whenever additive or deductive items are included in a bid, the bid solicitation shall specify which one of the following methods will be used to determine the lowest bid. In the absence of such a specification, only the method provided by subdivision (a) will be used:

(a) The lowest bid shall be the lowest bid price on the base contract without consideration of the prices on the additive or deductive items.

(b) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items that were specifically identified in the bid solicitation as being used for the purpose of determining the lowest bid price.

(c) The lowest bid shall be the lowest total of the bid prices on the base contract and those additive or deductive items taken in order



from a specifically identified list of those items, depending upon available funds as identified in the solicitation.

(d) The lowest bid shall be determined in a manner that prevents any information that would identify any of the bidders from being revealed to the public entity before the ranking of all bidders from lowest to highest has been determined.

A responsible bidder who submitted the lowest bid as determined by this section shall be awarded the contract, if it is awarded. This section does not preclude the local agency from adding to or deducting from the contract any of the additive or deductive items after the lowest responsible bidder has been determined.

