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AB-1424 University of California: Best Value Construction Contracting Program. (2017-2018)

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Assembly Bill No. 1424

CHAPTER 850

An act to amend Sections 10506.4, 10506.5, and 10506.6 of, to amend the heading of Article 1.5 (commencing with Section 10506.4) of Chapter 2.1 of Part 2 of Division 2 of, to add Section 10506.8 to, and to repeal and add Section 10506.9 of, the Public Contract Code, relating to best value contracts.

[Approved by Governor October 15, 2017. Filed with Secretary of State October 15, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1424, Levine. University of California: Best Value Construction Contracting Program.

Existing law creates a Best Value Construction Contracting Pilot Program for the Regents of the University of California to award construction contracts based on the best value procedures, as specified. Existing law requires the regents to adopt and publish procedures and required criteria, as specified, that ensure that all selections are conducted in a fair and impartial manner. Existing law requires bidders to verify specified information under oath. Existing law repeals these provisions on January 1, 2018.

This bill, with certain exceptions, would prohibit a best value contractor from being prequalified or shortlisted unless the best value contractor provides an enforceable commitment to the regents that the best value contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with specified skilled and trained workforce requirements. The bill would require a contractor, bidder, or other entity that commits to using a skilled and trained workforce to complete a contract or project also to provide a monthly report demonstrating compliance with these provisions. The bill would eliminate the repeal date for the pilot program, and by doing so, would extend the requirement that bidders verify specified information under oath, and impose a state-mandated local program by expanding the scope of an existing crime.

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 Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The heading of Article 1.5 (commencing with Section 10506.4) of Chapter 2.1 of Part 2 of Division 2 of the Public Contract Code is amended to read:

Article 1.5. Best Value Construction Contracting Program

SEC. 2. Section 10506.4 of the Public Contract Code is amended to read:

10506.4. (a) This article provides the Best Value Construction Contracting Program for the Regents of the University of California for projects over one million dollars (\$1,000,000).

(b) The Regents of the University of California shall let any contract for a project pursuant to this article to the lowest responsible bidder or else reject all bids.

(c) The lowest responsible bidder may be selected on the basis of the best value to the university, as defined in Section 10506.5. In order to implement this method of selection, the Regents of the University of California shall adopt and publish procedures and required guidelines for evaluating the qualifications of the bidders that ensure that best value selections by the university are conducted in a fair and impartial manner. These procedures and guidelines shall conform to the requirements of Sections 10506.6 and 10506.7 and shall be mandatory for the university when using best value selection.

(d) If one or more of the bids is substantially equal to the lowest bid, and at least one of those bidders is a disadvantaged business enterprise, a women business enterprise, or a disabled veteran business enterprise, the Regents of the University of California may award the contract in accordance with the policies and procedures adopted pursuant to Section 10500.5.

(e) If the Regents of the University of California deem it to be for the best interest of the university, the regents may, on the refusal or failure of the successful bidder for a project to execute a tendered contract, award it to the second lowest responsible bidder. 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.

SEC. 3. Section 10506.5 of the Public Contract Code is amended to read:

10506.5. For purposes of this article, the following definitions apply:

(a) "Best value" means a procurement process whereby the lowest responsible bidder may be selected on the basis of objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications.

(b) "Best value contract" means a contract entered into pursuant to the provisions of this article.

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

(d) "Demonstrated management competency" means the experience, competency, capability, and capacity of the proposed management staffing to complete projects of similar size, scope, or complexity.

(e) "Financial condition" means the financial resources needed to perform the contract. The criteria used to evaluate a bidder's financial condition shall include, at a minimum, capacity to obtain all required payment bonds, performance bonds, and liability insurance.

(f) "Labor compliance" means the ability to comply with, and past performance with, contract and statutory requirements for the payment of wages and qualifications of the workforce. The criteria used to evaluate a bidder's labor compliance shall include, as a minimum, the bidder's ability to comply with the apprenticeship requirements of the California Apprenticeship Council and the Department of Industrial Relations, its past conformance with such requirements, and its past conformance with requirements to pay prevailing wages on public works projects.

(g) "Project labor agreement" means a prehire collective bargaining agreement that establishes terms and conditions of employment for a specific construction project or projects and is an agreement described in Section 158(f) of Title 29 of the United States Code.

(h) "Qualifications" means financial condition, relevant experience, demonstrated management competency, labor compliance, the safety record of the bidder, and, if required by the bidding documents, some or all of the preceding qualifications as they pertain to subcontractors proposed to be used by the bidder for designated portions of the work.

(i) "Relevant experience" means the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity.

(j) "Safety record" means the prior history concerning the safe performance of construction contracts. The criteria used to evaluate a bidder's safety record shall include, as a minimum, its experience modification rate for the most recent three-year period, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period.

(k) "University" means all locations of the University of California.

SEC. 4. Section 10506.6 of the Public Contract Code is amended to read:

10506.6. The university shall proceed in accordance with the following when awarding best value contracts under this article.

(a) The university shall prepare a solicitation for bids and give notice pursuant to Section 10502.

(b) The university shall establish a procedure to prequalify bidders. The information required pursuant to this section shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. Information submitted by the bidder as part of the evaluation process shall not be open to public inspection to the extent that information is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) (1) A best value contractor shall not be prequalified or shortlisted unless the entity provides an enforceable commitment to the Regents of the University of California that the best value contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeship occupation in the building and construction trades, in accordance with Sections 10506.8 and 10506.9.

(2) This subdivision shall not apply if any of the following requirements are met:

(A) The Regents of the University of California have entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that project labor agreement.

(B) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the Regents of the University of California prior to January 1, 2018.

(C) The best value contractor has entered into a project labor agreement that will bind the entity and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(3) For purposes of this subdivision, "project labor agreement" has the same meaning as in subdivision (g) of Section 10506.5.

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

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

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

(A) Criteria that the university will consider in evaluating the qualifications of the bidders.

(B) The methodology and rating or weighting system that will be used by the university in evaluating bids.

(C) The relative importance or weight assigned to the criteria for evaluating the qualifications of bidders identified in the request for bids.

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

SEC. 5. Section 10506.8 is added to the Public Contract Code, to read:

10506.8. For purposes of this article:

(a) "Apprenticeship occupation" means an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations has approved an apprenticeship program pursuant to Section 3075 of the Labor Code before January 1, 2014.

(b) "Chief" means the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations.

(c) "Graduate of an apprenticeship program" means either of the following:

(1) An individual who has been issued a certificate of completion under the authority of the California Apprenticeship Council for completing an apprenticeship program approved by the chief pursuant to Section 3075 of the Labor Code.

(2) An individual who has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(d) "Skilled and trained workforce" means a workforce that meets all of the following requirements:

(1) All of the workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief.

(2) (A) For work performed on or after January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work in the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation. This requirement shall not apply to work performed in the occupation of teamster.

(B) For work performed on or after January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work in the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation. This requirement shall not apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(C) For work performed on or after January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation. This requirement shall not apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(D) For work performed on or after January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by every contractor and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation. This requirement shall not apply to work performed in the following occupations: acoustical installer, bricklayer, carpenter, cement mason, drywall installer or lather, marble mason, finisher, or setter, modular furniture or systems installer, operating engineer, pile driver, plasterer, roofer or waterproofer, stone mason, surveyor, teamster, terrazzo worker or finisher, and tile layer, setter, or finisher.

(3) For an applicable occupation in which no apprenticeship program had been approved by the chief before January 1, 1995, up to one-half of the graduation percentage requirement of paragraph (2) may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation before the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

(4) The apprenticeship graduation percentage requirements of paragraph (2) are satisfied if, in a calendar month, either of the following occurs:

(A) At least the required percentage of the skilled journeypersons employed by the contractor or subcontractor to perform work on the contract or project meet the graduation percentage requirements.

(B) For the hours of work performed by skilled journeypersons employed by the contractor or subcontractor on the contract or project, the percentage of hours performed by skilled journeypersons who meet the graduation requirement is at least equal to the required graduation percentage.

(5) The contractor or subcontractor need not meet the apprenticeship graduation requirements of paragraph (2) if, during the calendar month, the contractor or subcontractor employs skilled journeypersons to perform fewer than 10 hours of work on the contract or project.

(6) A subcontractor need not meet the apprenticeship requirements of paragraph (2) if both of the following requirements are met:

(A) The subcontractor was not a listed subcontractor under Section 4104 or a substitute for a listed subcontractor.

(B) The subcontract does not exceed one-half of 1 percent of the price of the prime contract.

(e) "Skilled journeyperson" means a worker who either:

(1) Graduated from an apprenticeship program for the applicable occupation that was approved by the chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

(2) Has at least as many hours of on-the-job experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the chief.

SEC. 6. Section 10506.9 of the Public Contract Code is repealed.

SEC. 7. Section 10506.9 is added to the Public Contract Code, to read:

10506.9. (a) If a contractor, bidder, or other entity is required to provide an enforceable commitment that a skilled and trained workforce will be used to complete a contract or project, the commitment shall be made in an enforceable agreement with the university that provides both of the following:

(1) The contractor, bidder, or other entity, and its contractors and subcontractors at every tier, will comply with this article.

(2) The contractor, bidder, or other entity shall provide to the university, on a monthly basis while the project contract is being performed, a report demonstrating compliance with this article.

(b) If the contractor, bidder, or other entity fails to provide the monthly report required by this section, or provides a report that is incomplete, the university shall withhold further payments until a complete record is provided.

(c) If a monthly report does not demonstrate compliance with this article, the university shall withhold further payments until the contractor, bidder, or other entity provides a plan to achieve substantial compliance with this article, with respect to the relevant apprenticeable occupation, prior to completion of the contract or project.

(d) A monthly report provided to the university shall be a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and shall be open to public inspection.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.