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SB-574 University of California: contracts: bidding. (2017-2018)

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Date Published: 09/20/2017 09:00 PM

ENROLLED SEPTEMBER 20, 2017

PASSED IN SENATE SEPTEMBER 15, 2017

PASSED IN ASSEMBLY SEPTEMBER 14, 2017

AMENDED IN ASSEMBLY SEPTEMBER 08, 2017

AMENDED IN ASSEMBLY SEPTEMBER 05, 2017

CALIFORNIA LEGISLATURE— 2017–2018 REGULAR SESSION

SENATE BILL

NO. 574

Introduced by Senator Lara
(Principal coauthor: Assembly Member Gonzalez Fletcher)

February 17, 2017

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 574, 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.

This bill, beginning January 1, 2019, would, for these purposes, require contracts for services involving an expenditure of \$100,000 or more annually to include any amendments, renewals, or extensions of the contract that would result in an expenditure of \$100,000 or more annually. The bill would prohibit amendment, renewal, or extension of an existing contract unless specified conditions are met.

The bill, beginning January 1, 2019, would, with certain exceptions, require a lowest responsible bidder or best value awardee on contracts for specified services to, among other requirements, certify in writing to the University of California (UC) that the bid includes, for all employees who work for more than 10 days at the university in any 12-month period under the contract, a total employee compensation package, including any fringe benefits and the compensation provided to employees of any of the bidder's intermediaries or subcontractors, 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 any contractor providing specified services pursuant to one or more contracts totaling more than \$100,000 annually, that has not already done so, to also provide this certification on or before January 1, 2022. The bill would make violation of this requirement subject to civil enforcement. The bill would require the UC to include in its request for proposals or other contract solicitations 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, beginning January 1, 2019, would require the bidder to provide written certification that it has not been found liable under specified criminal statutes or wage orders of the Industrial Welfare Commission, as specified.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

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

(a) The State Auditor has found that the University of California does not track, and currently has no means to track, how many service workers employed by private contractors to provide services to the University of California received affordable health insurance benefits.

(b) The State Auditor has found that the University of California has repeatedly amended contracts to extend them without competitive bidding or specific guidelines on the use of those amendments, including, in one instance, extending a seven-year contract to a total term of 19 years.

(c) The State Auditor has found that when the University of California has displaced employees through its contracting practices, it has not adequately measured or tracked cost savings after the contract has taken effect.

(d) It is a matter of statewide concern that the University of California not repeat past instances in which the University has squandered valuable public resources via contracting out to for-profit service contractors that charge significant administrative overhead and maximize their profits through low-wage practices.

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, for all employees who work for more than 10 days at the university in any 12-month period under the contract, a total employee compensation package, including any fringe benefits and the compensation provided to employees of any of the bidder's intermediaries or subcontractors, 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. Violation of this subdivision shall be subject to civil enforcement and shall not be subject to punishment pursuant to Section 118 of the Penal Code.

(2) The University of California shall implement this section by including in its request for proposals or other contract solicitations 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, Section 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 does not apply to temporary employees who work for the bidder, its intermediaries or subcontractors, and are assigned to work at the university for 10 days or less in any 12-month period. Beginning on the individual's 11th day of work at the University in any 12-month period, the employee shall be compensated consistent with the total employee compensation package certified pursuant to paragraph (1) of subdivision (b).

(h) (1) This section shall become operative on January 1, 2019.

(2) On or before January 1, 2022, any contractor providing services described in subdivision (a) pursuant to one or more contracts totaling more than one hundred thousand dollars (\$100,000) annually, that has not already done so, shall also provide the certification required by this section.

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 until January 1, 2019, and as of that date is repealed.

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 amendment, renewal, or extension of an existing contract, including any expansion of the scope of work or location where the work is to be performed beyond the specific duties and work locations identified in the existing contract, if the amendment, renewal, or extension or contract expansion involves an expenditure of one hundred thousand dollars (\$100,000) or more annually.

(c) Amendments, renewals, and extensions of existing contracts may be entered into only if one of the following circumstances exists:

(1) The amendment, renewal, or extension is statutorily exempt from the requirements of this article.

(2) The regents approve an exception based on a specific written determination under Section 10508 that the price is fair and reasonable, and the contractor has met the certification requirements of Section 10507.6.

(3) The original contract included specific language providing for the amendment, renewal, or extension, and one of the following is true:

(A) The original solicitation for bids anticipated and specifically described the potential contract amendment, renewal, or extension, including the reasons for the potential amendment, renewal, or extension, and required the contractor to meet the certification requirements of Section 10507.6.

(B) The amendment, renewal, or extension is for the sole purpose of adding time to complete performance of the original agreement and does not exceed one year.

(C) The amendment, renewal, or extension adds no more than 30 percent, not to exceed two hundred fifty thousand dollars (\$250,000), to the amount of the original contract.

(d) No contract amendment, renewal, or extension may be used to circumvent the competitive bidding process as provided for in this article.

(e) This section shall become operative on January 1, 2019.