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AB-1957 Public contracts: best value construction contracting for counties. (2023-2024)

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Assembly Bill No. 1957

CHAPTER 58

An act to amend Sections 20155, 20155.1, 20155.7, and 20155.9 of, and to amend the heading of Article 3.7 (commencing with Section 20155) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to public contracts.

[Approved by Governor July 02, 2024. Filed with Secretary of State July 02, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1957, Wilson. Public contracts: best value construction contracting for counties.

Existing law establishes a pilot program to allow the Counties of Alameda, Los Angeles, Monterey, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Solano, and Yuba to select a bidder on the basis of best value, as defined, for construction projects in excess of \$1,000,000. Existing law also authorizes these counties to use a best value construction contracting method to award individual annual contracts, not to exceed \$3,000,000, for repair, remodeling, or other repetitive work to be done according to unit prices, as specified. Existing law establishes procedures and criteria for the selection of a best value contractor and requires that bidders verify specified information under oath. Existing law requires the board of supervisors of a participating county to submit a report that contains specified information about the projects awarded using the best value procedures described above to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee before March 1, 2024. Existing law repeals the pilot program provisions on January 1, 2025.

This bill would instead authorize any county of the state to utilize this program and would extend the operation of those provisions until January 1, 2030. The bill would instead require the board of supervisors of a participating county to submit the report described above to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee before March 1, 2029. Because the bill would expand the program to all counties within the state and would extend the operation of the program, the bill would expand the crime of perjury, thereby imposing a state-mandated local program.

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 3.7 (commencing with Section 20155) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code is amended to read:

Article 3.7. Best Value Construction Contracting for Counties

SEC. 2. Section 20155 of the Public Contract Code is amended to read:

20155. (a) This article provides for a best value procurement program for county construction projects in excess of one million dollars (\$1,000,000).

(b) The board of supervisors of a county shall let any contract for a construction project pursuant to this article to the bidder representing the best value or else reject all bids.

(c) The bidder may be selected on the basis of the best value to the county. In order to implement this method of selection, the board of supervisors shall adopt and publish procedures and required criteria that ensure that all selections are conducted in a fair and impartial manner. These procedures shall conform to Sections 20155.3 to 20155.6, inclusive, and shall be mandatory for a county that chooses to participate in the pilot program.

(d) If the board of supervisors of a county deems it to be in the best interest of the county, the board of supervisors, on the refusal or failure of the successful bidder for a project to execute a tendered contract, may award it to the bidder with the second lowest best value score, as determined in accordance with subdivision (c) of Section 20155.5. If the second bidder fails or refuses to execute the contract, the board of supervisors may likewise award it to the bidder with the third lowest best value score, as determined in accordance with subdivision (c) of Section 20155.5.

(e) (1) A county may also use the best value construction contracting method set out in this article to award individual annual contracts, which shall not exceed three million dollars (\$3,000,000), adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work to be done according to unit prices. The contracts shall be based on plans and specifications for typical work. No annual contracts may be awarded for any new construction.

(2) For purposes of this subdivision, best value criteria shall be applied to the annual contract for construction services, rather than to an individual, specific project. Annual contracts may be extended or renewed for two subsequent annual terms and a maximum of six million dollars (\$6,000,000) over the subsequent two terms of the contract. Contract values shall be adjusted annually to reflect the percentage change in the California Consumer Price Index.

(3) For purposes of this subdivision, "unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project. For purposes of this section, "repair, remodeling, or other repetitive work to be done according to unit prices" shall not include design or contract drawings.

SEC. 3. Section 20155.1 of the Public Contract Code is amended to read:

20155.1. As used in this article:

(a) "Best value" means a procurement process whereby the selected 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 competitively bid contract entered into pursuant to 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) "County" means any chartered or general law county. "County" includes a city and county.

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

(f) "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.

(g) "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 performance with those requirements, and its past conformance with requirements to pay prevailing wages on public works projects.

(h) "Qualifications" means the financial condition, relevant experience, demonstrated management competency, labor compliance, and 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. A county shall evaluate financial condition, relevant experience, demonstrated management competency, labor compliance, and safety record, using, to the extent possible, quantifiable measurements.

(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, at 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.

SEC. 4. Section 20155.7 of the Public Contract Code is amended to read:

20155.7. (a) Before March 1, 2029, the board of supervisors of a participating county shall submit a report to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee. The report shall include, but is not limited to, the following information:

(1) A description of the projects awarded using the best value procedures.

(2) The contract award amounts.

(3) The best value contractors awarded the projects.

(4) A description of any written protests concerning any aspect of the solicitation, bid, or award of the best value contracts, including the resolution of the protests.

(5) A description of the prequalification process.

(6) The criteria used to evaluate the bids, including the weighting of the criteria and an assessment of the effectiveness of the methodology.

(7) If a project awarded under this article has been completed, an assessment of the project performance, to include a summary of any delays or cost increases.

(b) A report submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

SEC. 5. Section 20155.9 of the Public Contract Code is amended to read:

20155.9. This article shall remain in effect only until January 1, 2030, and as of that date is repealed.

SEC. 6. 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.