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AB-2192 Public agencies: cost accounting standards. (2023-2024)

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Assembly Bill No. 2192

CHAPTER 953

An act to amend Sections 22002, 22032, 22034, 22039, 22042, 22042.5, 22043, and 22044 of the Public Contract Code, relating to public contracts.

[Approved by Governor September 29, 2024. Filed with Secretary of State September 29, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2192, Juan Carrillo. Public agencies: cost accounting standards.

Existing law, the Uniform Public Construction Cost Accounting Act, authorizes a public agency which has, by resolution, elected to become subject to uniform construction cost accounting procedures. Existing law provides for the development of cost accounting standards and an alternative method for the bidding of public works projects by public entities. The act defines "public project" to include, among other things, construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility.

This bill would define "public project" to additionally include installations involving any publicly owned, leased, or operated facility.

The Uniform Public Construction Cost Accounting Act authorizes public projects of \$60,000 or less to be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order, authorizes public projects of \$200,000 or less to be let to contract by informal procedures, and requires public projects of more than \$200,000 to be let to contract by formal bidding procedures. The act permits the governing body of a public agency, in the event all bids received for the performance of that public project are in excess of \$200,000, to award the contract at \$212,500 or less to the lowest responsible bidder if it determines the cost estimate of the public agency was reasonable.

This bill would instead authorize public projects of \$75,000 or less to be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order, authorize public projects of \$220,000 or less to be let to contract by informal procedures, and require public projects of more than \$220,000 to be let to contract by formal bidding procedures. The bill would permit the governing body of a public agency, in the event all bids received for the performance of that public project are in excess of \$220,000, to award the contract at \$235,000 or less to the lowest responsible bidder if it determines the cost estimate of the public agency was reasonable. The bill would also make conforming changes.

The Uniform Public Construction Cost Accounting Act creates the California Uniform Construction Cost Accounting Commission, to fulfill certain duties, including recommending for adoption by the Controller uniform construction cost accounting procedures for implementation by public agencies in the performance of, or in contracting for, construction on public projects. The act requires the commission to review the accounting procedures of any participating public agency where an interested party presents evidence that the work undertaken by the public agency falls into specified categories, including that the public agency has exceeded the force account limits. The act also requires the commission to review practices of any participating public agency

where an interested party presents evidence that the public agency is not in compliance with requirements to enact a prescribed informal bidding ordinance to govern the selection of contractors to perform public projects.

This bill would additionally require the commission to review the accounting procedures of any participating public agency where an interested party presents evidence that the work undertaken by the public agency has been split or separated into smaller work orders or projects, as specified, and would make conforming changes. The bill would also require the commission to review noncompliance with bidding procedures for the publication or posting and electronic transmission of notice inviting formal bids.

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

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

SECTION 1. Section 22002 of the Public Contract Code is amended to read:

22002. (a) "Public agency," for purposes of this chapter, means a city, county, city and county, including chartered cities and chartered counties, any special district, and any other agency of the state for the local performance of governmental or proprietary functions within limited boundaries. "Public agency" also includes a nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) "Representatives of the construction industry" for purposes of this chapter, means a general contractor, subcontractor, or labor representative with experience in the field of public works construction.

(c) "Public project" means any of the following:

(1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, installation, and repair work involving any publicly owned, leased, or operated facility.

(2) Painting or repainting of any publicly owned, leased, or operated facility.

(3) In the case of a publicly owned electric utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

(d) "Public project" does not include maintenance work. For purposes of this section, "maintenance work" includes all of the following:

(1) Routine, recurring, and usual work for the preservation or protection of any publicly owned or publicly operated facility for its intended purposes.

(2) Minor repainting.

(3) Resurfacing of streets and highways at less than one inch.

(4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems.

(5) Work performed to keep, operate, and maintain publicly owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher.

(e) For purposes of this chapter, "facility" means any plant, building, structure, ground facility, utility system, subject to the limitation found in paragraph (3) of subdivision (c), real property, streets and highways, or other public work improvement.

SEC. 2. Section 22032 of the Public Contract Code is amended to read:

22032. (a) Public projects of seventy-five thousand dollars (\$75,000) or less may be performed by the employees of a public agency by force account, by negotiated contract, or by purchase order.

(b) Public projects of two hundred twenty thousand dollars (\$220,000) or less may be let to contract by informal procedures as set forth in this article.

(c) Public projects of more than two hundred twenty thousand dollars (\$220,000) shall, except as otherwise provided in this article, be let to contract by formal bidding procedure.

SEC. 3. Section 22034 of the Public Contract Code is amended to read:

22034. Each public agency that elects to become subject to the uniform construction accounting procedures set forth in Article 2 (commencing with Section 22010) shall enact an informal bidding ordinance to govern the selection of contractors to perform public projects pursuant to subdivision (b) of Section 22032. The ordinance shall include all of the following:

(a) Notice to contractors shall be provided in accordance with either paragraph (1) or (2), or both.

(1) The public agency shall maintain a list of qualified contractors, identified according to categories of work. Minimum criteria for development and maintenance of the contractors list shall be determined by the commission. All contractors on the list for the category of work being bid shall be mailed, faxed, or emailed a notice inviting informal bids unless the product or service is proprietary. All mailing of notices to contractors pursuant to this subdivision shall be completed not less than 10 calendar days before bids are due.

(2) The public agency may elect to mail, fax, or email a notice inviting informal bids to all construction trade journals specified in Section 22036.

(b) The notice inviting informal bids shall describe the project in general terms and how to obtain more detailed information about the project, and state the time and place for the submission of bids.

(c) The governing body of the public agency may delegate the authority to award informal contracts to the public works director, general manager, purchasing agent, or other appropriate person.

(d) If all bids received are in excess of two hundred twenty thousand dollars (\$220,000), the governing body of the public agency may, by adoption of a resolution by a four-fifths vote, award the contract, at two hundred thirty-five thousand dollars (\$235,000) or less, to the lowest responsible bidder, if it determines the cost estimate of the public agency was reasonable.

SEC. 4. Section 22039 of the Public Contract Code is amended to read:

22039. The governing body of the participating public agency or its designated representative shall adopt plans, specifications, and working details for all public projects exceeding the amount specified in subdivision (c) of Section 22032.

SEC. 5. Section 22042 of the Public Contract Code is amended to read:

22042. The commission shall review the accounting procedures of any participating public agency where an interested party presents evidence that the work undertaken by the public agency falls within any of the following categories:

(a) Is to be performed by a public agency after rejection of all bids, claiming work can be done less expensively by the public agency.

(b) Exceeded the force account limits set forth in subdivision (a) of Section 22032.

(c) Has been improperly classified as maintenance.

(d) Has been split or separated into smaller work orders or projects, in violation of Section 22033.

(e) Has exceeded the limits or otherwise not met the requirements set forth in subdivisions (b) and (c) of Section 22032.

SEC. 6. Section 22042.5 of the Public Contract Code is amended to read:

22042.5. The commission shall review practices of any participating public agency where an interested party presents evidence that the public agency is not in compliance with Section 22034 or 22037.

SEC. 7. Section 22043 of the Public Contract Code is amended to read:

22043. (a) In those circumstances set forth in subdivision (a) of Section 22042, a request for commission review shall be in writing, sent by certified or registered mail received by the commission postmarked not later than eight business days from the date the public agency has rejected all bids.

(b) In those circumstances set forth in subdivision (b), (c), (d), or (e) of Section 22042, a request for commission review shall be by letter received by the commission not later than eight days from the date an interested party formally complains to the public agency.

(c) The commission review shall commence immediately and conclude within the following number of days from the receipt of the request for commission review:

(1) Forty-five days for a review that falls within subdivision (a) of Section 22042.

(2) Ninety days for a review that falls within subdivision (b), (c), (d), or (e) of Section 22042.

(d) During the review of a project that falls within subdivision (a) of Section 22042, the agency shall not proceed on the project until a final decision is received by the commission.

(e) A request for commission review pursuant to Section 22042.5 shall be in writing, sent by certified or registered mail, and received by the commission no later than eight days from the day an interested party formally complains to the public agency. The commission review shall commence immediately and conclude within 90 days from the receipt of the request for commission review.

SEC. 8. Section 22044 of the Public Contract Code is amended to read:

22044. The commission shall prepare written findings, which shall be presented to the public agency within 30 calendar days of formal commission review. Should the commission find that the provisions of this chapter or of the uniform cost accounting procedures provided for in this chapter were not complied with by the public agency, the following steps shall be implemented by that agency:

(a) On those projects set forth in subdivision (a) of Section 22042, the public agency has the option of either (1) abandoning the project, or (2) awarding the project to the lowest responsible bidder.

(b) On those projects set forth in subdivision (b), (c), (d), or (e) of Section 22042, the public agency shall present the commission's findings to its governing body within 30 calendar days of receipt of written notice of the findings and that governing body shall conduct a public hearing with regard to the commission's findings within 60 calendar days of receipt of the findings.

(c) (1) On findings of noncompliance pursuant to Section 22042.5, the public agency shall notify its governing body of the commission's findings within 60 calendar days of receipt of written notice of the findings from the commission.

(2) The public agency shall notify the commission in writing, within 90 days of receipt of written notice of the findings, of the public agency's best efforts to comply.