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**AB-2235 Public contracts: local agencies: wind infrastructure.** (2023-2024)

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**Assembly Bill No. 2235**

**CHAPTER 707**

An act to add Chapter 4.8 (commencing with Section 22190) to Part 3 of Division 2 of the Public Contract Code, relating to public contracts.

[ Approved by Governor September 27, 2024. Filed with Secretary of State September 27, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2235, Lowenthal. Public contracts: local agencies: wind infrastructure.

Existing law generally requires public contracts to be awarded by competitive bidding pursuant to procedures set forth in the Public Contract Code, subject to various exceptions. Existing law authorizes certain local government agencies to use alternative contracting methods, including best value procurement and progressive design-build contracting for particular types of public projects, including, among others, certain construction projects and regional communications and related infrastructure projects.

Existing law establishes requirements that apply when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce to complete a contract or project, and imposes various duties on the Labor Commissioner with respect to those requirements.

This bill would authorize the City of Long Beach to procure contracts relating to the terminal development project at the Port of Long Beach, known as Pier Wind, and to enter into an alternative project delivery method contract for that purpose, as provided. The bill would require the city to prepare, publicly advertise, and issue solicitation documents to procure and award any contract, subject to prescribed requirements. For purposes of these provisions, the bill would authorize the city to perform various duties regarding the procurement and administration of these contracts, including amending those contracts, as prescribed.

The bill would impose various prohibitions and requirements on a business entity, including requiring that entity to provide payment bonds for the project and using a skilled and trained workforce to perform all construction work on the project. The bill would require the contract between the city and the business entity to comply with certain requirements, such as including errors and omissions insurance. The bill would require all documents related to the project to be subject to disclosure under the California Public Records Act. The bill would define various terms for purposes of its provisions.

The bill would state that its provisions are severable and would make legislative findings and declarations as to the necessity of a special statute for the City of Long Beach.

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

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

**SECTION 1.** Chapter 4.8 (commencing with Section 22190) is added to Part 3 of Division 2 of the Public Contract Code, to read:

**CHAPTER 4.8. Port of Long Beach Pier Wind Project Contracting**

**22190.** For purposes of this chapter, the following definitions apply:

- (a) "Apprenticeable occupation" has the same meaning as provided in subdivision (a) of Section 2601.
- (b) "Best interests of the city" means a procurement process that is determined by the city to provide the best value and an expedited delivery schedule while maintaining a high level of quality workmanship and materials.
- (c) "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.
- (d) "Business entity" means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, engineering, financial, construction, operations, management, facilities maintenance, and other services for development of the project, as applicable in relation to its respective scope of work.
- (e) "City" means the City of Long Beach and its Board of Harbor Commissioners.
- (f) "Construction" for purposes of the project, as defined in subdivision (p), does not include maritime and longshore operations.
- (g) "Construction manager at-risk" means a competitively procured contract by the city with an individual, partnership, joint venture, corporation, or other recognized legal entity, that is appropriately licensed in this state, including a contractor's license issued by the Contractors State License Board, and that guarantees the cost of a project and furnishes construction management services, including, but not limited to, preparation and coordination of bid packages, scheduling, cost control, value engineering, evaluation, preconstruction services, and construction administration.
- (h) "Construction Manager/General Contractor" means a project delivery method using a best value procurement process in which a construction manager is procured to provide preconstruction services during the design phase of the project and construction or construction management services during the construction phase of the project.
- (i) "Construction subcontract" means each subcontract awarded by a business entity to a subcontractor that will perform work, labor, or render services to the business entity in or about the construction of the project, or a subcontractor licensed by the State of California that, under subcontract to the business entity, specially fabricates and installs a portion of the work or improvement according to detailed drawings contained in plans and specifications.
- (j) "Design-build" means a procurement process in which both the design and construction of a project are procured in a single phase.
- (k) "Design sequencing" means a method of project delivery that enables the sequencing of design activities to permit each construction phase to commence when the design for that phase is complete, instead of requiring the design for the entire project to be completed before commencing construction.
- (l) "Guaranteed maximum price" means the maximum payment agreed upon by the city and a business entity to finish all remaining design, preconstruction, and construction activities sufficient to complete and close out the project or any part of the project.
- (m) "Maritime and longshore operations" for purposes of the project, as defined in subdivision (p), includes all of the following:
  - (1) The loading and unloading of cargo or materials to and from vessels, or the movement of cargo or materials to and from vessels, or other directly related functions, at any terminal or port facility to the cargo's or material's point of rest, except for the movement of construction materials on a barge, construction staging area, or construction area when used as a construction work platform, rigging and hoisting of construction materials directly from a barge, construction staging area, or construction area when being used as a construction work platform into the construction process, the removal of construction materials directly from the project to a barge, construction staging area, or construction area when being used as a construction work platform, and the movement of construction materials and construction equipment within the construction staging area, from the construction staging area to the construction site, and on the construction site.
  - (2) Maintenance and repair work on the containers and equipment used to load or unload vessels.
  - (3) Maintenance and repair work necessary to facilitate the movement of cargo or materials to and from vessels at any terminal or port facility to the cargo or material's point of rest.

(n) "Preconstruction services" means services during the design phase, including, but not limited to, scheduling, pricing, and phasing to assist the city to design a more constructible project.

(o) "Progressive design-build" means a project delivery method in which the design, preconstruction services, and construction of the project or part of the project are procured, in one or more stages, from a single design-build entity that is selected through a best value-based selection at an early stage of the project.

(p) (1) "Project" means the terminal development project at the Port of Long Beach, currently known as Pier Wind, that is anticipated to involve the construction and development of a large-scale, multiacre terminal and transportation corridor to support offshore wind-related activities.

(2) "Project" does not include the construction, assembly, operation, or maintenance of offshore wind turbine systems or their floating foundations, nor the manufacturing and fabrication of their components.

(3) "Project" does not include maritime and longshore operations.

(q) "Project labor agreement" has the same meaning as provided in paragraph (1) of subdivision (b) of Section 2500.

(r) "Public works" has the same meaning as provided in subdivision (a) of Section 1720 of the Labor Code.

(s) "Vessel" includes, but is not limited to, a ship, boat, barge, and other related maritime craft.

**22191.** (a) (1) The city may procure contracts for the project or any part of the project pursuant to this chapter.

(2) The city may enter into an alternative project delivery method contract for any part of the project pursuant to this chapter upon completing both of the following:

(A) An evaluation of the traditional design-bid-build process of construction and of the alternative project delivery method in a public meeting.

(B) Following the evaluation specified in subparagraph (A), a written finding that use of the alternative project delivery method on the project will accomplish one or more of the following objectives:

(i) Reduce project costs.

(ii) Expedite the completion of the project.

(iii) Provide features that are not achievable through the design-bid-build method.

(b) Subject to the limitations of this chapter, the city may utilize any of the following alternative project delivery methods, or any combination of the following methods:

(1) Construction manager at-risk.

(2) Construction Manager/General Contractor.

(3) Design-build.

(4) Design sequencing.

(5) Progressive design-build.

(c) The design and construction of the project may occur in sequential or concurrent phases.

(d) This chapter does not allow an alternative project delivery method to include maritime and longshore operations.

(e) Except to the extent otherwise required under applicable law, the city may include in any contract procured pursuant to this chapter any provision that the city determines is necessary or appropriate.

(f) (1) The city shall prepare, publicly advertise, and issue solicitation documents to procure and award any contract pursuant to this chapter, subject to the following:

(A) For Construction Manager/General Contractor contracts, the solicitation documents prepared by the city shall include criteria that are the same as, or substantially similar to, those provided in subparagraphs (A) to (K), inclusive, of paragraph (1) of, and paragraph (2) of, subdivision (a) of Section 6703.

(B) For design-build and progressive design-build contracts, the city shall comply with the same or substantially similar requirements of Section 22185.2 and Sections 22185.4 to 22185.7, inclusive, and subdivisions (a), (c), and (d) of Section 22185.3.

(2) The contract solicitation process may include prequalification or short-listing business entities who seek to perform the project or any part of the project.

(3) The city shall review submissions it solicits and receives and may award contracts for the project to one or more responsible business entities whose submissions are determined by the city to be the most advantageous by providing the best value in meeting the best interests of the city.

(g) The city shall retain the right not to award any contract for the project, including if the city determines that the project is not in the best interests of the city or should negotiations with any business entity otherwise fail.

**22192.** (a) (1) Upon agreement of the pricing, including any guaranteed maximum price if applicable, for any relevant aspects of the project, the city, in its sole and absolute discretion, may do all of the following:

(A) Amend its contract with the business entity.

(B) Direct the business entity to complete the remaining design, preconstruction, and construction activities sufficient to complete and close out the project or any part of the project.

(C) Add funds to the contract for the activities pursuant to this subdivision.

(2) Any amendment of the existing contract with the business entity shall not require any additional competitive process.

(3) This section does not require the city to amend an existing contract or enter into a new contract for remaining design, preconstruction, or construction activities for the project.

(b) (1) If the city and the business entity do not reach an agreement on pricing for any relevant aspect of the project, or if the city otherwise elects not to have the business entity complete some or all of the remaining work, the city may solicit proposals to complete some or all of the remaining work for the project from firms that previously submitted proposals.

(2) (A) The city may, upon written determination that it is in the best interest of the city to do so, formally solicit proposals from other business entities to complete some or all of the remaining work for the project, or complete the project using other delivery methods.

(B) If otherwise applicable to the city, any contract awarded for the project shall be made on a best value basis.

**22193.** (a) The city, in its solicitation for proposals or bids for the project, may identify specific types of subcontractors, certifications, and license classifications that shall be included in the business entity's proposal or bid.

(b) All construction subcontractors that are identified in the business entity's proposal or bid shall be afforded the protections of Chapter 4 (commencing with Section 4100) of Part 1.

**22194.** (a) All public works constructed pursuant to this chapter shall comply with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(b) A business entity shall not be evaluated for selection or eligible for selection by the city unless the business entity provides an enforceable commitment to the city that the business entity and its subcontractors at every tier shall use a skilled and trained workforce to perform all construction work on the project or contract that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1.

(c) Subdivision (b) shall not apply if one or more of the following requirements are met:

(1) The city has entered into a project labor agreement that will bind all contractors and subcontractors performing construction work on the project or contract to use a skilled and trained workforce, and the business entity agrees to be bound by that project labor agreement.

(2) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the city before January 1, 2025, which binds all contractors and subcontractors performing construction work to use a skilled and trained workforce.

(3) The business entity has entered into a project labor agreement that shall bind the entity and all of its subcontractors at every tier performing construction work on the project or contract to use a skilled and trained workforce.

**22195.** The business entity shall provide payment bonds for the project issued by a California-admitted surety in the form, at the times, and in the amount required by the city.

**22196.** (a) The relevant contracts between the city and the business entity for the project shall require errors and omissions insurance coverage for the design elements of the project.

(b) The relevant contracts between the city and the business entity shall be subject to subdivision (b) of Section 2782 of the Civil Code.

(c) Any contract between the business entity and a contractor or subcontractor relating to the project shall be subject to Section 2782.05 of the Civil Code.

**22197.** (a) The negotiation process shall expressly prohibit practices that may result in unlawful activity, including, but not limited to, rebates, kickbacks, or other unlawful consideration.

(b) The negotiation process shall expressly prohibit city employees from participating in the selection process when those employees have a relationship with a person or business entity seeking a contract under this chapter that would subject those employees to Section 87100 of the Government Code.

**22198.** All documents related to the project shall be subject to disclosure under the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), except those exempted from disclosure under the act.

**22199.** (a) The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

(b) Except as expressly provided herein, this chapter does not affect, expand, alter, or limit any rights or remedies otherwise available at law.

**SEC. 2.** The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique and special circumstances surrounding the project and the need to immediately, quickly, and efficiently develop the project.