

PUBLIC CONTRACT CODE SECTION 20155-20155.9 with current legislative amendments

Note: amendments [*shown in italics*] were approved by Governor October 3, 2019 and will be adopted January 1, 2020

20155. (a) ~~This article provides for a pilot program for the Counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba for construction projects in excess of one million dollars (\$1,000,000).~~

[This article provides for a pilot program for the Counties of Alameda, Los Angeles, Monterey, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Solano, and Yuba for 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. ~~20155.1. As used in this article:~~

[(e) (1) A county listed in subdivision (a) 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.]

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 of the following counties:

~~(1) The County of Alameda.~~

~~(2) The County of Los Angeles.~~

~~(3) The County of Riverside.~~

~~(4) The County of San Bernardino.~~

~~(5) The County of San Diego.~~

~~(6) The County of Solano.~~

~~(7) The County of Yuba.~~

[(1) The County of Alameda.

(2) The County of Los Angeles.

(3) The County of Monterey.

(4) The County of Riverside.

(5) The County of San Bernardino.

(6) The County of San Diego.

(7) The County of San Mateo.

(8) The County of Santa Clara.

(9) The County of Solano.

(10) The County of Yuba.]

(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 conformance 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.

20155.2. As used in this article:

(a) "Apprenticeable occupation" means an occupation for which the Chief of the Division of Apprenticeship Standards had approved an apprenticeship program pursuant to Section 3075 of the Labor Code prior to January 1, 2014.

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

(1) All the workers are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards.

(2) (A) As of January 1, 2016, at least 20 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the United States Secretary of Labor.

(B) As of January 1, 2017, at least 30 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the United States Secretary of Labor.

(C) As of January 1, 2018, at least 40 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the United States Secretary of Labor.

(D) As of January 1, 2019, at least 50 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the United States Secretary of Labor.

(E) As of January 1, 2020, at least 60 percent of the skilled journeypersons employed to perform work on the contract or project by the entity and each of its subcontractors at every tier are graduates of an apprenticeship program for the applicable occupation that was either approved by the Chief of the Division of Apprenticeship Standards pursuant to Section 3075 of the Labor Code or located outside California and approved for federal

purposes pursuant to the apprenticeship regulations adopted by the United States Secretary of Labor.

(F) For an apprenticeable occupation in which no apprenticeship program had been approved by the Chief of the Division of Apprenticeship Standards prior to January 1, 1995, up to one-half of the graduation percentage requirements of subparagraphs (A) to (E), inclusive, may be satisfied by skilled journeypersons who commenced working in the apprenticeable occupation prior to the chief's approval of an apprenticeship program for that occupation in the county in which the project is located.

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

(1) Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief of the Division of Apprenticeship Standards or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the United States 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 of the Division of Apprenticeship Standards.

20155.3. A county shall proceed in accordance with the following when awarding best value contracts under this article:

(a) The county shall not select a bidder on the basis of the best value to a county unless, after evaluating at a public meeting the alternative of awarding the contract on the basis of the lowest bid price, the county makes a written finding that awarding the contract on the basis of best value, for the specific project under consideration, will accomplish one or more of the following objectives: reducing project costs, expediting the completion of the project, or providing features not achievable through awarding the contract on the basis of the lowest bid price.

(b) The county shall prepare a solicitation for bids and give notice pursuant to Section 20125. A county may identify specific types of subcontractors that are required to be included in the bids.

A county shall comply with Chapter 4 (commencing with Section 4100) of Part 1 with regard to construction subcontractors identified in the bid.

(c) The county shall establish a procedure to prequalify bidders pursuant to Section 20101. 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).

(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 county will consider in evaluating bids.

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

(C) The relative importance or weight assigned to the criteria 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.

20155.4.

(a) A best value contractor shall not be prequalified or shortlisted unless the contractor provides an enforceable commitment to the county that the 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.

(b) A contractor's commitment that a skilled and trained workforce will be used to perform the project or contract may be established by any of the following:

(1) The contractor's agreement with the county that the contractor and its subcontractors at every tier will comply with the requirements of this section and that the contractor will provide the county with evidence, on a monthly basis while the project or contract is being performed, that the contractor and its subcontractors are complying with the requirements of this section.

(2) If the county has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project or contract, and that includes the requirements of this section, the contractor's agreement that it will become a party to that project labor agreement.

(3) Evidence that the contractor has entered into a project labor agreement that includes the requirements of this section and that will bind the contractor and all its subcontractors at every tier performing the project or contract.

20155.5. Selection of the best value contractor shall be made as follows:

(a) (1) An evaluation committee appointed by the county shall evaluate the qualifications of the bidders based solely upon the criteria set forth in the solicitation documents, and shall assign a qualifications score to each bid.

(2) A county shall establish written policies and procedures, consistent with applicable law, to ensure that members of an evaluation committee are free from conflicts of interest, if the county has not already established applicable written policies and procedures.

(b) A county shall not award a contract for a construction project pursuant to this article if a solicitation for bids for that construction project results in the submission of fewer than three responsive bids to the county for evaluation.

(c) Except as provided in subdivision (d) of Section 20155, the award of the contract shall be made to the bidder whose bid is determined by a county, in writing, to be the best value to the county. To determine the best value contractor, the county shall divide each bidder's price by its qualifications score. The lowest resulting cost per quality point will represent the best value bid.

(d) A county shall issue a written decision of its contract award.

(e) Upon issuance of a contract award, a county shall publicly announce its award identifying the best value contractor to which the award is made, the project, the project price, and the selected best value contractor's score based on the evaluation criteria listed in the request for bids. The notice of award shall be made public and include the score of the selected best value contractor in relation to all other responsive bidders and their respective prices. The contract file shall include documentation sufficient to support the decision to award.

20155.6.

(a) If a county elects to award a project pursuant to this article, retention proceeds withheld by the county from the selected best value contractor shall not exceed 5 percent if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.

(b) In a contract between the selected best value contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the

retention proceeds withheld shall not exceed the percentage specified in the contract between the county and the selected best value contractor. If the selected best value contractor provides written notice to a subcontractor that, prior to or at the time the bid is requested, a bond may be required and the subcontractor subsequently is unable or refuses to furnish a bond to the selected best value contractor, then the selected best value contractor may withhold retention proceeds in excess of the percentage specified in the contract between the county and the selected best value contractor from any payment made by the selected best value contractor to the subcontractor.

20155.7.

(a) ~~Before January 1, 2020~~ *[Before March 1, 2024]*, 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.

20155.8.

Except as otherwise provided in this article, this article is not intended to change in any manner any guideline, criteria, procedure, or requirement of a county to let any contract for a project to the lowest responsible bidder or else reject all bids.

20155.9.

~~This article shall remain in effect only until January 1, 2020,~~ *[This article shall remain in effect only until January 1, 2025]*, and as of that date is repealed.