

ASSEMBLY BILL

No. 271

Introduced by Assembly Member Robert Rivas
(Principal coauthor: Senator Laird)
(Coauthors: Assembly Members Berman and Kalra)

January 19, 2021

An act to add Section 21163 to the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 271, as introduced, Robert Rivas. Santa Clara Valley Water District: contracts: best value procurement.

Existing law authorizes certain local entities to select a bidder for a contract on the basis of “best value,” as defined. Existing law governs various types of contract procedures applicable to the Santa Clara Valley Water District and prescribes competitive bidding procedures for any improvement or unit of work over \$50,000.

This bill would authorize the district, upon approval by the board of directors of the district, to award contracts on a best value basis for any work of the Anderson Dam project, defined to include prescribed activities and works of construction with regard to the Leroy Anderson Dam and Reservoir and certain fish and aquatic habitat measures described in a federal-state settlement agreement. The bill would require the district, if the board elects to award contracts on a best value basis, to comply with specified requirements governing the documents prepared setting forth the scope and estimated price of the project and the request for qualifications. The bill would prohibit a best value contractor from being prequalified, shortlisted, or awarded a contract unless the contractor provides an enforceable commitment to the district

that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project, in accordance with certain criteria. By requiring certain information of bidders to be certified under penalty of perjury, the bill would expand an existing crime, thereby imposing a state-mandated local program.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Santa Clara Valley Water District.

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.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) The Leroy Anderson Dam and Reservoir, owned by the
- 4 Santa Clara Valley Water District and located in the County of
- 5 Santa Clara, is the largest reservoir in the county with a capacity
- 6 of 89,278 acre-feet, is a critical part of the region's water supply
- 7 system, and provides incidental flood protection, as well as
- 8 environmental and recreational benefits.
- 9 (b) A breach of the Leroy Anderson Dam at full capacity could
- 10 have catastrophic consequences, including inundation of a land
- 11 area extending more than 30 miles northwest to San Francisco
- 12 Bay, including the Cities of Milpitas, San Jose, Santa Clara, and
- 13 Sunnyvale, and more than 40 miles southeast to Monterey Bay,
- 14 including the Cities of Gilroy, Morgan Hill, and Watsonville. This
- 15 area includes a significant part of the region known as Silicon
- 16 Valley and is home to thousands of job-creating businesses that
- 17 drive the regional, state, and national economies.
- 18 (c) The dam has been determined by the Santa Clara Valley
- 19 Water District, the Department of Water Resources Division of
- 20 Safety of Dams, and the Federal Energy Regulatory Commission
- 21 to be at risk of an uncontrolled release of water due to a seismic
- 22 event. On February 20, 2020, the Federal Energy Regulatory
- 23 Commission directed the Santa Clara Valley Water District to

1 maintain the reservoir at a level that is equivalent to 35 percent of
2 the reservoir's capacity, begin draining the reservoir to deadpool
3 by October 1, 2020, and expedite reconstruction and improvement
4 of the dam outlet structure to begin as soon as feasible to allow
5 the deadpool to be maintained. The Santa Clara Valley Water
6 District is in the process of complying with the federal order and
7 began the draining of the reservoir on October 1, 2020, and is
8 moving expeditiously to construct a new dam outlet structure.

9 (d) Built in 1950 to the seismic and dam safety standards of the
10 day, the dam would not withstand the largest likely earthquake,
11 known as the maximum credible earthquake, on the nearby
12 Calaveras and Coyote Creek faults. A 2008 seismic stability
13 evaluation identified potential embankment instability as a result
14 of seismic shaking and liquefaction. In 2012, and again in 2020,
15 voters in the County of Santa Clara approved parcel taxes to pay
16 for the initiation of the Anderson Dam Seismic Retrofit Project
17 and pay for a portion of the overall project costs. By 2016, findings
18 from the geotechnical and geologic investigations performed during
19 the project's design phase led to the conclusion that a more
20 extensive dam retrofit than had originally been envisioned would
21 have to be performed, causing a necessary delay and redesign of
22 the project.

23 (e) In February 2017, an atmospheric river event, which
24 conveyed a series of wet storms to the region, resulted in flows
25 over the dam's spillway that, together with heavy flows from
26 surrounding waterways, eventually exceeded the capacity of Coyote
27 Creek. The creek flooded homes and businesses in economically
28 diverse neighborhoods in San Jose, including disadvantaged
29 communities and communities of color, requiring the evacuation
30 of 14,000 people. The dam's outlet, used to draw down the
31 reservoir in an emergency, is too small by modern standards, and
32 in advance of the 2017 storms, the outlet had been releasing as
33 much water as possible for more than a month.

34 (f) The Santa Clara Valley Water District's Anderson Dam
35 Seismic Retrofit Project will remove and replace the dam. It will
36 be constructed to modern seismic and dam safety standards,
37 including increased capacities for the dam's spillway and outlet
38 to allow a rapid, controlled drawdown in an emergency and to
39 enhance incidental flood protection.

(g) The Anderson Dam Seismic Retrofit Project is complex and must be evaluated under both state and federal environmental laws. The independent Board of Consultants, convened pursuant to the Federal Energy Regulatory Commission process, has recommended the “best value” method for awarding the construction contracts for the Anderson Dam Seismic Retrofit Project due to its complex design, delivery, and installation.

(h) Authorizing the Anderson Dam Seismic Retrofit Project for the “best value” method of contract award, similar to other major surface storage projects, is in keeping with construction industry practices and is prudent for a project of this scale and importance.

SEC. 2. Section 21163 is added to the Public Contract Code, to read:

21163. (a) As used in this section:

(1) (A) “Anderson Dam project” or “project” means any activity or work of construction to retrofit, repair, replace, or improve the safety of the Leroy Anderson Dam and Reservoir, owned by the Santa Clara Valley Water District and located in the County of Santa Clara, including any upstream or downstream construction, improvements, changes in operational activities, and flood protection measures that may be required to implement that activity or work.

(B) The “Anderson Dam project” or “project” includes any avoidance, minimization, or mitigation measures, including the Coyote Creek-related Phase 1 measures of the Fish and Aquatic Habitat Collaborative Effort, as described in the settlement agreement, determined to be appropriate by the district, in consultation with state and federal agencies identified as “responsible agencies” or “trustee agencies” pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(2) “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.

(3) “Best value contract” means a competitively bid contract entered into pursuant to this section.

1 (4) “Best value contractor” means a properly licensed person,
2 firm, or corporation that submits a bid for, or is awarded, a best
3 value contract.

4 (5) “District” means the Santa Clara Valley Water District.

5 (6) “Project labor agreement” has the same meaning as in
6 paragraph (1) of subdivision (b) of Section 2500.

7 (7) “Settlement agreement” means the agreement entitled
8 “Settlement Agreement Regarding Water Rights of the Santa Clara
9 Valley Water District on Coyote, Guadalupe, and Stevens Creeks”
10 initialed on May 27, 2003, by the district, the United States
11 Department of the Interior, United States Fish and Wildlife Service,
12 the United States Department of Commerce, National Marine
13 Fisheries Service, the California Department of Fish and Game,
14 the Guadalupe-Coyote Resource Conservation District, Trout
15 Unlimited, the Pacific Coast Federation of Fishermen’s
16 Associations, and California Trout, Incorporated.

17 (b) Upon the approval of the board, the district may award
18 contracts on a best value basis for any work for the Anderson Dam
19 project.

20 (c) If the board elects to award a contract on a best value basis
21 pursuant to the authorization in subdivision (b), the district shall
22 comply with both of the following:

23 (1) The district shall prepare a set of documents setting forth
24 the scope and estimated price of the project. The documents may
25 include, but need not be limited to, the size, type, and desired
26 design character of the project, performance specifications covering
27 the quality of materials, equipment, workmanship, preliminary
28 plans or layouts, or any other information deemed necessary to
29 adequately describe the district’s needs. The performance
30 specifications and any plans shall be prepared by a design
31 professional who is duly licensed and registered in California.

32 (2) The district shall prepare and issue a request for
33 qualifications in order to prequalify or short-list the entities,
34 including subcontractors and suppliers, whose bids shall be
35 evaluated for final selection. The request for qualifications shall
36 include, but need not be limited to, all of the following elements:

37 (A) Identification of the basic scope and needs of the project or
38 contract, the expected cost range, the methodology that will be
39 used by the district to evaluate bids, the procedure for final
40 selection of the bidder, and any other information deemed

1 necessary by the district to inform interested parties of the
2 contracting opportunity.

3 (B) Significant factors that the district reasonably expects to
4 consider in evaluating qualifications, including technical
5 design-related expertise, construction expertise, acceptable safety
6 records, and all other non-price-related factors.

7 (C) A standard template request for statements of qualifications
8 prepared by the district. In preparing the standard template, the
9 district may consult with the construction industry, the building
10 trades and surety industry, and other local agencies with experience
11 awarding a contract on a best value basis. The template shall
12 require all of the following information:

13 (i) If the bidder is a privately held corporation, limited liability
14 company, partnership, or joint venture, composed of privately held
15 entities, a listing of all of the shareholders, partners, or members
16 known at the time of statement of qualification submission who
17 will perform work on the project.

18 (ii) Evidence that the members of the contracting team have
19 completed, or demonstrated the experience, competency, capability,
20 and capacity to complete, projects of similar size, scope, or
21 complexity and that proposed key personnel have sufficient
22 experience and training to competently manage and complete the
23 project, and a financial statement that ensures that the bidder has
24 the capacity to complete the project.

25 (iii) The licenses, registration, and credentials required for the
26 project, including, but not limited to, information on the revocation
27 or suspension of any license, credential, or registration.

28 (iv) Evidence that establishes that the bidder has the capacity
29 to obtain all required payment and performance bonding, liability
30 insurance, and errors and omissions insurance.

31 (v) Information concerning workers' compensation experience
32 history and a worker safety program.

33 (vi) An acceptable safety record. "Safety record" means the
34 prior history concerning the safe performance of construction
35 contracts. The criteria used to evaluate a bidder's safety record
36 shall include, at a minimum, its experience modification rate for
37 the most recent three-year period, and its average total recordable
38 injury or illness rate and average lost work rate for the most recent
39 three-year period.

1 (vii) The information required under this subparagraph shall be
2 certified under penalty of perjury by the bidder and its general
3 partners or joint venture members.

4 (d) (1) A best value contractor shall not be prequalified,
5 shortlisted, or awarded a contract, regardless of whether the best
6 value process is used, unless the contractor provides an enforceable
7 commitment to the district that the contractor and its subcontractors
8 at every tier will use a skilled and trained workforce to perform
9 all work on the project or contract that falls within an
10 apprenticeable occupation in the building and construction trades,
11 in accordance with Chapter 2.9 (commencing with Section 2600)
12 of Part 1.

13 (2) Paragraph (1) shall not apply if either of the following
14 requirements are met:

15 (A) The district has entered into a project labor agreement that
16 will bind all contractors and subcontractors performing work on
17 the project or contract to use a skilled and trained workforce, and
18 the contractor agrees to be bound by that project labor agreement.

19 (B) The contractor has entered into a project labor agreement
20 that will bind the contractor and all its subcontractors at every tier
21 performing the project or contract to use a skilled and trained
22 workforce.

23 SEC. 3. The Legislature finds and declares that a special statute
24 is necessary and that a general statute cannot be made applicable
25 within the meaning of Section 16 of Article IV of the California
26 Constitution because of the findings set forth in Section 1 of this
27 act.

28 SEC. 4. No reimbursement is required by this act pursuant to
29 Section 6 of Article XIII B of the California Constitution because
30 the only costs that may be incurred by a local agency or school
31 district will be incurred because this act creates a new crime or
32 infraction, eliminates a crime or infraction, or changes the penalty
33 for a crime or infraction, within the meaning of Section 17556 of
34 the Government Code, or changes the definition of a crime within
35 the meaning of Section 6 of Article XIII B of the California
36 Constitution.