

New California Laws for 2016 that Affect Contractors

Over 2700 bills were introduced by the California Legislature in the 2014-2015 session. Below are summaries of some of the more important bills affecting contractors in their roles as contractors, effective January 1, 2016 unless otherwise noted. Many other bills will impact them in other roles, such as being businesses, taxpayers, and employers. For MLC's Law Note reporting on changes in the laws affecting employers in 2016, please visit our website's **Employment Law Notes page**. Each of the summaries are brief, focusing on the gist of the bill, while most of the bills have additional provisions that are not mentioned. Links are provided to the full text of each of the bills for those wanting to know in detail the provisions of the new law. Lastly, reference is made to 2-year bills carried over to 2016 and to failed bills that are likely to be revisited next session.

Design-Build and "Best Value"

Pilot Program to Allow "Best Value" contracting in Certain Counties. SB 762 (Wolk D)

This section establishes a pilot program to allow certain counties to select a bidder on the basis of best value for construction projects in excess of \$1mm. "Best value" means a value determined by evaluation of objective criteria that relate to price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the department and meeting the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring agency, or a tradeoff between price and other specified factors. Bidders must verify specified information under oath. Applies to Counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba. The Counties' boards of supervisors must report to the Legislature about their experiences before January 1, 2020, at which time the program sunsets unless extended by a future bill.

Pilot Program Allows "Best Value" contracting by Los Angeles Unified School District and Requires Increasing Percentages of Apprenticeship Graduates. AB 1185 (Ridley-Thomas D)

Until December 31, 2020, LAUSD may use "best value" procurement instead of traditional "lowest responsible bidder" for projects over \$1mm. The district must report to the Legislature during and at end of the pilot program. "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. By January 1, 2020, at least 60 percent of the skilled journeypersons on the job, whether for the direct contractor or subcontractors at every tier, must be graduates of an approved apprenticeship program.

School Facilities Design-Build Threshold Reduced to \$1mm and Allows “Best Value”. AB 1358 (Dababneh D)

Existing school design-build authorization is lowered from \$2.5mm to include projects of \$1mm and above. Also, school districts may now use “Best Value” procurement. “Best value” means a value determined by evaluation of objective criteria that may include, but are not limited to, price, features, functions, life-cycle costs, experience, and past performance. A best value determination may involve the selection of the lowest cost proposal meeting the interests of the school district and the objectives of the project, selection of the best proposal for a stipulated sum established by the procuring school district, or a tradeoff between price and other factors.

Fall River Mills in Shasta County (population 573 in 2010) Gets Design-Build for its Hospital District. AB 1290 (Dahle R)

The Local Agency Public Construction Act establishes bidding procedures for the award of construction contracts by local agencies. Under the Act, counties may use a design-build procedure for building contracts in excess of \$1mm. This section authorizes the Mayers Memorial Hospital District to use the design-build process when contracting for the construction of a building and improvements directly related to a hospital or health facility building at Mayers Memorial Hospital.

Public Private Partnerships

City of Long Beach Civic Center Authorized to Use Unique “Best Value” PPP. SB 562 (Lara D)

Notwithstanding any other law, the City of Long Beach may contract and procure a project for the revitalization and redevelopment of the Long Beach Civic Center. The City may lease all or a portion of the project to a private entity or entities for a term of up to 50 years. The Legislature declares that a special law is necessary because a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution, because of the need to immediately, quickly, and efficiently develop the project, and to resolve property issues potentially delaying the project. The City will consider any number of PPP arrangements and will issue contract based on “best value”. “Best value” means a value determined by objective criteria that shall include a combination of price, financing costs, features, functions, performance, life-cycle maintenance costs and abatement offsets, and development experience.

Public Works Construction Manager Contracting

Regional Transportation Agencies Get Construction Manager/General Contractor Project Delivery Method for Expressway Projects. AB 1171 (Linder R)

Previously, CalTrans, San Diego, and Santa Clara County entities were authorized to use the Construction Manager/General Contractor project delivery method. This law expands that authorization to include certain expressways that are not in the state highway system if: (1) the expressways are developed in accordance with an expenditure plan approved by voters, (2) there is an evaluation of the traditional design-bid-build method of construction and of the Construction Manager/General Contractor method, and (3) the board of the regional transportation agency adopts the method in a public meeting. The agency must report to its governing body upon project completion under oath.

Competitive Bidding - Prequalification

Public Schools Must Prequalify Contractors (Whether PPP or Low Bid), Regardless of Funding Source, and Must Require Increasing Percentages of Apprenticeship Graduates. AB 566 (O'Donnell D)

All school districts of over 2500 students must require any person, firm, or corporation that constructs a public school building, whether using PPP or competitive bidding, to comply with specified prequalification requirements, including a standardized prequalification questionnaire and financial statement, regardless of the funding source for the public project. This law sunsets on December 31, 2018 and is repealed unless extended. By January 1, 2019, at least 60 percent of the skilled journeypersons on the job, whether for the direct contractor or subcontractors at every tier, must be graduates of an approved apprenticeship program. This part has no expiration.

Public Works Job Order Contracting

All School Districts May Now Use Job Order Contracting for Jobs Over \$25,000. AB 1431 (Gomez D)

Previously LAUSD was authorized to use job order contracting. Now all California public school districts use job order contracting for all public works in excess of \$25,000 through December 31, 2021. However, to qualify, a school district must have entered into a project labor agreement or agreements in effect through at least December 21, 2021 that apply to all of the district's public works in excess of \$25,000, regardless of what contracting procedure is used to award that work. Job order contractors must submit a questionnaire to the school district containing specified information verified under oath.

Prevailing Wage

Concrete Haulers Must Pay Prevailing Wages. AB 219 (Daly D)

Haulers who remove refuse from a site are already entitled to receive prevailing wages, and this law extends the same entitlement to haulers who bring concrete to a public project site. "Public works" is now defined to include the hauling and delivery of ready-mixed concrete to carry out a public works contract, with respect to contracts involving any state agency or any political subdivision of the state. The wage rate at the factory or batching plant establishes the rate to be paid to haulers. Subcontracts and payroll records are required. Violation is a crime. Effective date is July 1, 2016.

Prevailing Wage Applies to Private Works for Hospitals Using Bond Money. AB 852 (Burke D)

The definition of "public works" is expanded for prevailing wage purposes to also include any construction, alteration, demolition, installation, or repair work done under a private contract on a project for a general acute care hospital, except on a project for a rural general acute care hospital with a maximum of 76 beds, when the project is paid for, in whole or in part, with the proceeds of conduit revenue bonds that were issued on or after January 1, 2016. Violation is a crime.

Public Works Consequential and Liquidated Damages

Most Public Works Delay Damages Clauses not Enforceable Unless Liquidated. AB 552 (O'Donnell D)

Any provision in a public works contract entered into on or after January 1, 2016, that expressly requires a contractor to be responsible for delay damages is not enforceable unless the delay damages have been liquidated to a set amount and identified in the public works contract. This section applies to the state, the Regents of the University of California, a city, charter city, county, charter county, district, public authority, municipal utility, and any other political subdivision or public corporation of the state. It does not apply to CA Departments (Water Resources, General Services, Boating and Waterways, Corrections and Rehabilitation, Military, and Transportation). Contracts may contain separate clauses for separate parts of the work.

Transparency in Public Contract Negotiations

Civic Reporting Openness in Negotiations Efficiency Act, or CRONEY. SB 331 (Mendoza D)

This law establishes specific procedures for the negotiation and approval of certain contracts valued at \$250,000 or more for goods or services by cities, counties, cities and counties, or special districts that have adopted a civic openness in negotiations ordinance, or COIN ordinance, defined as an ordinance imposing specified requirements as part of any collective bargaining process undertaken pursuant to the Meyers-Milias-Brown Act. It requires designation of an independent auditor to review and report on the cost of any proposed contract. The city, county, city and county, or special district must disclose prescribed information relating to the contract and contract negotiations on its Internet Web site. The act prohibits a final determination by the governing body regarding approval of any contract until the matter has been heard at a minimum of 2 public meetings of the governing body. CRONEY does not apply expressly to contracts for construction.

Licensure Enforcement

CSLB to Report Contractor Information to EDD and to Enforce Workers Compensation Insurance Requirements. SB 560 (Monning D)

Like the State Bar does against lawyers, this law requires the CSLB to submit contractors' personal information to the Employment Development Department. It also authorizes the CSLB's enforcement division to enforce the obligation to secure the payment of valid and current workers' compensation insurance. The enforcement division is entitled to free access to work sites and may issue "tickets"—notices to appear in court—such as for failing to have proof of workers compensation insurance on site. Enforcement personnel do not have the power to arrest. Additionally, this law makes it a misdemeanor crime to falsely certify exemption from workers compensation requirements or to employ a worker without having workers compensation insurance in place.

2-Year Bills to Watch (2015 Bills Carried Over to 2016)

AB 1125 (Weber D) State agency contracts: small business preferences.

AB 1445 (Brown D) Public contracts: small business contracts size increase.

SB 136 (Hall D) Public contracts: University of California self-perform authorized up to \$100,000.
SB 630 (Hancock D) Public contracts: bidders: cost overruns must be reported.
AB 846 (Gallagher R) Mechanic's lien: dismissal for failing to serve action within 6 months.
AB 52 (Gray D) Public accommodations: limitations of liability for owners who try to comply with ADA.
AB 1152 (Frazier D) Construction defects: prelitigation procedures apply to all claims, including negligence.
AB 411 (Lackey R) Public contracts spot bill.
AB 1315 (Alejo D) Public contracts: prohibits delegation of water pollution prevention plans.
AB 1208 (Frazier D) Exemption for specialty contractors from Fire Marshall's license requirement.
SB 465 (Hill D) Contractors required to disclose and CSLB to publicize settlements and awards.
AB 326 (Frazier D) Expeditious release of escrow funds for civil wage and penalty assessments.
AB 898 (Gonzalez D) Employee wages spot bill.
AB 966 (Baker R) California Solar Initiative: ratepayer funded incentives: conditions.
AB 1007 (McCarty D) Set the minimum wage at the amount necessary to keep a family of 3 above the supplemental poverty level.
AB 1354 (Dodd D) State contractors' wage nondiscrimination programs and reporting.
SB 3 (Leno D) Minimum wage adjustments to \$13 per hour by July 1, 2017.
AB 742 (Gallagher R) Heavy-duty diesel-fueled vehicles emissions regulations timing.
SB 8 (Hertzberg D) Taxation on services.
SB 632 (Cannella R) Lowered speed limits near schools.
SB 653 (Berryhill R) Underground economy spot bill.
AB 1265 (Perea D) PPP's for transportation projects extended and to include Santa Clara.
SB 569 (Anderson R) School facilities PPP's spot bill.

Failed Bills Likely to be Revisited

Expedited Handling of Claims and Change Orders on Public Works. AB 1347 (Chiu D)

This bill would establish a claim resolution process applicable to all claims by direct contractors and subcontractors in connection with public works. The bill would define a claim as a separate demand by the contractor for one or more of the following: a time extension for relief from damages or penalties for delay, payment of money or damages arising from work done pursuant to the contract for a public work, or payment of an amount disputed by the public entity. It would also establish timeframes for processing claims.

Protection of subsurface installations. SB 119 (Hill D)

Lengthy bill revising and clarifying subsurface excavation notifications, regulations, procedures and liabilities, and establishing an advisory committee.

Protection for PPPs Entered in Reliance on Prior Law. AB 975 (Mullin D)

This bill would provide that for school district PPPs entered before July 1, 2015, that are later determined to be invalid, the contractor who entered into the contract with the school district is entitled to be paid the reasonable cost of the labor, equipment, materials, and services furnished by the contractor before the date of the determination, subject to specified conditions.

--Daniel F. McLennon