

Date of Hearing: April 5, 2017

ASSEMBLY COMMITTEE ON ACCOUNTABILITY AND ADMINISTRATIVE REVIEW

Susan Talamantes Eggman, Chair

AB 262 (Bonta) – As Amended March 27, 2017

**SUBJECT:** Public contracts: lowest responsible bidder: eligible materials

**SUMMARY:** Requires bidders on state contracts to include greenhouse gas (GHG) emissions information for specified eligible materials in the bid and requires specified state entities to evaluate these bids based on a system designed by the Department of General Services (DGS) Specifically, **this bill:**

- 1) Applies the provisions to the Department of Water Resources, Department of Transportation, Department of Boating and Waterways, Department of Corrections and Rehabilitation, Military Department, DGS, University of California (UC), and California State University (CSU).
- 2) Requires that if a project uses specified eligible materials, the departments, UC, and CSU must require all prospective bidders to complete a standard form that states the cumulative amount of GHG emissions produced in the material extraction and processing, transport to the manufacturing site, and manufacturing of the material to be used for the project.
- 3) Specifies that the requirement above can be met by obtaining an Environmental Product Declaration (EPD), as defined, or using a similar method.
- 4) Requires DGS to establish a method that takes GHG emissions, as disclosed on bidder-provided EPDs, into account when reviewing and awarding bids.
  - a) Requires that the method includes calculations of GHG emissions from the factory to the job site.
  - b) Requires DGS to consider how a contracting department can apply a point system, discount system, or other system within the bid review process to favor bids with lower-than-average GHG emissions than those in the bid pool.
  - c) Requires DGS to consider establishing a historic baseline for GHG emissions from eligible materials, and evaluate against this baseline.
- 5) Requires that the departments, UC and CSU use the method developed by DGS when awarding contracts with the intent of reducing GHG emissions along the supply chain.
- 6) Sets requirements for departments, UC and CSU to report GHG emissions related to their projects.
- 7) Establishes a process for winning bidders to change material suppliers, if needed, for specified reasons.
- 8) Adds another eligible material at a later date, as specified.

**EXISTING LAW:** Generally requires the state to award bids for public works projects to the lowest responsible bidder.

**FISCAL EFFECT:** Unknown

**COMMENTS:** This bill establishes a process to consider GHG emissions of specified eligible materials when certain departments, UC, and CSU choose winning bids for projects. Specifically, these entities would require bidders who plan to use an eligible material to provide EPDs or similar documentation that show the associated GHG impacts.

Eligible materials include concrete, flat glass, manufacture wool (a type of insulation), aluminum, iron, brass and steel. The EPDs to evaluate these impacts must include GHG emissions produced in the material extraction and processing, transport to the manufacturing site, and in manufacturing.

This bill requires DGS to establish and publish in the State Contracting Manual a method that takes GHG emissions, as disclosed on the bidder-provided EPDs, into account when reviewing and awarding bids. The method would include a consideration of GHG emissions when transporting eligible materials from the factory to job site. Additionally, DGS would have to consider establishing a point system based on GHG emissions as well as establishing a historic baseline for GHG emissions by eligible material and evaluate relative to the baseline.

Departments, UC, and CSU would then be required to follow the process and guidance established by DGS.

According to the author, "California has rightfully taken a lead on reducing climate change pollution and other associated air pollution. Manufacturers who are based here follow some of the most stringent pollution control requirements in the nation, if not the world. . . This bill will make sure clean manufacturers' efforts are considered in the bid review process. At the same time, it will send a signal to manufacturers around the world that if you want to compete in the California market, you'll have to disclose your material's pollution profile."

This bill also includes reporting requirements. On or before January 1, 2019 and annually thereafter, the departments, UC, and CSU must submit to the Legislature and the Governor, and post on their respective websites a report that details the GHG emissions related to their projects.

While existing law generally requires the state to award bids to the lowest responsible bidder, there are some exceptions. For example, the state has a contracting preference for Certified Small Businesses, in which contracting entities make adjustments based on the bids. DGS specifies in the SCM how to implement this evaluation. Specifically, it states "the bid of a certified small business is reduced for evaluation purposes by 5% of the lowest cost offered by a noncertified small business."

DGS explains that, in meeting the requirements of this bill, it would likely examine how preferences like the one for small businesses are currently calculated. However, the processes set by this bill would likely entail a more detailed bid-review evaluation than the approach used in current state contracting preferences.

Supporters of this bill explain that it uses the state's purchasing power in line with the state's goals to reduce climate pollution. Opponents contend that the bill sets a complex process that could result in increased bid protests.

As the bill moves forward, the author may wish to address some inconsistencies in the bill related to which products would be considered eligible materials by which state entities. The author states that the intent is for the seven eligible materials, as noted above, to apply to all specified state entities' processes, and that amendments will be made in the future to clarify this.

#### **PRIOR LEGISLATION:**

AB 2181 (Brown) of 2016 would have required specified state departments, UC, and CSU to evaluate the impact of GHG emissions on certain infrastructure projects and incorporate GHG emissions considerations into their procurement processes. This bill was held on the Assembly Appropriations Committee's Suspense File.

**DOUBLE REFERRAL:** This bill is double referred. Should it pass out of this committee, it will be referred to the Assembly Committee on Natural Resources.

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

350 Sacramento  
American Lung Association in California  
Asian Pacific Environmental Network  
Breathe California  
California Against Waste  
California Environmental Justice Alliance  
California League of Conservation Voters  
Catholic Charities of the Diocese of Stockton  
Central Concrete Supply Company  
Clean Water Action  
Coalition for Clean Air  
Environment California  
Filipino/American Coalition for Environmental Solidarity  
Gerdau Steel  
Natural Resources Defense Council  
Sierra Club California  
The Trust for Public Land  
Union of Concerned Scientists  
Voices For Progress  
Voices For Progress Education Fund

##### **Opposition**

Air Conditioning & Refrigeration Contractors Association  
Air Conditioning Sheet Metal Association  
Building Industry Credit Association  
California Legislative Conference of Plumbing, Heating & Piping Industry

Construction Employers' Association  
Finishing Contractors Association of Southern California  
National Electric Contractors Association  
Northern California Allied Trades  
Southern California Contractors Association  
The Association of General Contractors Of America  
United Contractors  
Wall and Ceiling Alliance

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