

ECA-Sponsored AB 1086 Clarifies "Or-Equal" Statute



By Phil Vermeulen,
ECA Legislative Advocate
Email: pvermeulen@surewest.net

It's always nice to start off my update by reporting on good news. I am proud to report that the governor has signed our sponsored bill, AB 1086 (Miller), which is now officially Chapter 132, Statutes of 2009. I received a call from the author, Assemblyman Jeff Miller, who was extremely pleased since this was his first bill to be signed as a freshman in the Assembly.

To refresh your memory Public Contract Code § 3400 is known as the "or-equal statute." Its purpose is to give taxpayers the benefit of contractor/manufacturer ingenuity that reduces the cost of construction while providing the same functionality of the product or construction method specified by the public agency who is bidding-out the work. It does so by encouraging ingenious contractors/manufacturers to bid jobs at a lower price, in anticipation of getting their ingenious or-equal product or method approved by a public entity.

To help ensure that the "or-equal clause" achieved its goals for the public, the law was amended in 2001 (through another of our sponsored bills) to allow a contractor up to 35 days after the award of the contract to submit his documentation to the entity justifying that the material or method was equal to or greater than that which was specified in the RFP. In the end, taxpayers have benefitted tremendously by the reduced costs of the construction of the public project due to Public Contract Code Section 3400.

Unfortunately, while Public Contract Code Section 3400 has served the public well for many years, there is at least one local agency that requires the receipt of or-equal submittals before bid day, and provides that the only way to get approval is by the issuance of an addendum to the bid package before bid day; thus allowing every competitor the opportunity to take advantage of the contractor's/manufacturer's ingenuity that allows it to lower its bid! A letter from the agency explains its position: "The most important part of this [or-equal

(Continued on Page 26.)



ZERO Tail Swing Excavators

Operating Weight: 71,938 lbs.
Overall Width: 11' 9"
Swing Radius: 6' 0"



Dig Depth: 22' 9"
Lift Capacity: 23,300 lbs.



www.savala.com
(800) 672-8252
(949) 552-1859

Serving: Los Angeles, Orange, San Diego,
Riverside & San Bernardino Counties

16402 E. Construction Cir.
Irvine, CA 92606

26340 Lester Cir.
Corona, CA 92883

Steering you in the right direction



Serving the insurance needs of ECA members with financially sound solutions at affordable rates.

- Surety Bonds
- Liability
- Workers' Comp
- Property
- Group Medical



CA Lic. # 0442083

www.allenlawrence.com • (800) 995-9170



RESOURCES

ECA MAGAZINE

J.F. Shea Construction, Inc.

General Contractors
Lic. # 769989

Bruce Cooksey
Project Manager

P.O. Box 489, 667 Brea Canyon Road, Suite 30, Walnut, CA 91788-0489
cell: (090) 376-8346 main: (909) 595-4397 fax: (909) 444-4263
email: bruce.cooksey@jfshea.com

WILLIAMS

Pipeline Contractors, Inc.

JOHN H. WILLIAMS, JR.
VICE PRESIDENT

4864 MARKET ST., SUITE C
VENTURA, CA 93003
CONTRACTORS LICENSE #353528
E-MAIL: johnjr@williamspipe.com

PH.: 805 664-1277
FAX: 805 477-0136
CELL PH.: 805 207-0148

Political Action

(Continued from Page 8.)

submission and approval] process is that requests for consideration of a substitute must be made prior to the receipt of bids. This requirement allows the City sufficient time to evaluate a product's equality and issue an addendum to all bidders in order to prevent one bidder from having an unfair advantage over another."

Ingenuity that leads to a lower bid is NOT an UNFAIR advantage - it is a classic FAIR advantage. It is an advantage that benefits society at-large by encouraging ingenuity. It is an advantage that benefits taxpayers by leading to lower prices for the same functionality. It is exactly the kind of "good public policy" that we want bidders to use to lower bids.

It has been suggested that the position of that local public agency is really a subterfuge to assure sole-sourcing to favored manufacturers in violation of the whole purpose of the or-equal statute, but the sponsors would prefer to think that this is a misunderstanding of the basic intent of the law by that agency. Regardless of the public agency's intent for this action, to encourage exactly the innovation desired to reduce costs to the public without reducing quality, the sponsors have proposed closing this loophole within the code by adding a legislative finding to the statute.

This measure takes effect on January 1, 2010. A BIG thank you is in order to Barney Kamine who requested the introduction of this measure and helped immeasurably throughout its

arduous journey by providing the technical expertise that was necessary to convince the Legislature and the governor that this measure deserved its approval!

Disabled Veteran Law

I reported recently that ABX4 21 was signed into law as part of the budget package. This is the bill (which became effective immediately as an urgency statute) that eliminated "good faith effort" as a means to comply with the 3% disabled veteran business enterprise (DVBE) requirements on state public works projects.

I regret to inform you that this change has already had an immediate impact. I learned this week that Caltrans has pulled back 13 jobs that were ready to be awarded because of this change in the law! So too, I've learned that myriad other state agencies are working to make changes to comply with the new law, but that most agencies are in an absolute state of confusion as to how they will ultimately comply.

Yesterday, my colleagues and I demanded and were granted a meeting with the governor's staff, agency secretaries, et al. When we walked into the governor's conference room over 25 high level bureaucrats from each and every agency were there to "greet us." After a nearly two hour meeting we were asked what our solution to the problem would be? We immediately replied, "go back to the way the law was before the governor signed this bill!" Stay tuned!

Advertiser's Index

Allen, Haight & Monaghan LLP	24
Allen Lawrence & Associates, Inc.	8
Atkinson, Andelson, Loya, Ruud & Romo	17
Ayala Boring	25
The Blue Book	20
Catalina Pacific Concrete	24
Coastline Equipment	28
Commercial Surety Bond Agency	14
D3 Equipment	24
D'Angelo Co.	24
Davis & Graeber Insurance	25
Earl Insurance Corp.	24
Fast Forward Concrete Cutting, Inc.	25
Garrett/Mosier/Griffith/Sistrunk Insurance Svcs	24
Glenn M. Gelman & Associates	24
Gill And Baldwin, P.C.	19
Griffin Dewatering Inc.	24
Hi-Way Safety Inc.	20
Inland Surety	25
Jezowski & Markel Contractors	25
Koppl Pipeline Services, Inc.	25
Kamine Collings & Phelps P.C.	14
LECET Southwest	11
MCC Equipment Rentals Inc.	10
Marne Construction	25
Maxim Crane Works	15
Metropolis Disposal	25
The Mootte Group	21
National Ready Mixed Concrete Co.	18
Northwest Excavating	16
Penhall Company	18
Dan J. Peterson	25
Precon Products	12
Rain For Rent	18
S&J Supply Co.	25
Sancon Engineering	6
Savala Equipment	8
J.F. Shea Construction, Inc.	26
Sullivan Curtis Monroe	22
TLR Equipment Co., Inc.	25
TPR Traffic Solutions	9
Trench Plate Rental Co.	3
Trench Shoring Company	27
United Rentals Trench Safety	2
Phil Vermeulen Govt. Relations	24
Video Fact	24
Watt, Tieder, Hoffer & Fitzgerald, LLP	20
Weule & Ballard, APC	14
Williams Pipeline Contractors, Inc.	26