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OPINION	:	No. 80-714
	:	
of	:	<u>September 30, 1980</u>
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SUBJECT: EMPLOYEES USED IN CONSTRUCTION—A county containing a population of less than 500,000 may use county personnel, juvenile court wards, county jail prisoners, government work trainees, or negotiate for the construction of a public project in accordance with the provisions of Government Code sections 25544, 25544.5 and 25547, notwithstanding the provisions of Government Code section 25450.

The Honorable Calvin E. Baldwin, County Counsel, County of Tulare, has requested an opinion on the following question:

May a county containing a population of less than 500,000 use county personnel, juvenile court wards, county jail prisoners, government work trainees, or negotiate for the construction of a public project in accordance with the provisions of Government Code sections 25544, 25544.5 and 25547, in light of the provisions of Government Code section 25450?

CONCLUSION

A county containing a population of less than 500,000 may use county personnel, juvenile court wards, county jail prisoners, government work trainees, or negotiate for the construction of a public project in accordance with the provisions of Government Code sections 25544, 25544.5 and 25547, notwithstanding the provisions of Government Code section 25450.

ANALYSIS

We are advised that the County of Tulare, a general law county of less than 500,000 in population, has solicited bids for the construction of an agricultural building for use in connection with one of its branch jail facilities. All bids submitted have been rejected by the county, and the possibility of using county employees working under a government work training program is now being considered by the board of supervisors.

The question presented for analysis is whether county employees may be used to construct the building, apparently allowed under one statutory scheme (Gov. Code §§ 25540-25547)¹ but apparently precluded under another statutory scheme (§§ 25450-25469). We conclude that the employees may be so used in such construction.

Preliminarily, we note that one of the recurring issues that arises in the field of government law is whether a particular public works project may be constructed without the solicitation of competitive bids and the awarding of the contract to the lowest responsible bidder. While no constitutional question is raised, numerous statutory schemes have been enacted that mandate a competitive bidding procedure in various circumstances. (See 62 Ops. Cal. Atty. Gen. 643, 646-648 (1979); 59 Ops. Cal. Atty. Gen. 242, 244-251 (1976); 38 Ops. Cal. Atty. Gen. 92-93 (1961).)

Here, we have two legislative enactments covering competitive bidding procedures for the construction of the same type of public works project by a county board of supervisors. The first is entitled "Construction, Alteration and Repair of Buildings" and is comprised of sections 25450-25469.² It generally mandates that a county constructing a public building for a sum in excess of \$4,000³ must solicit and accept the lowest

¹ All statutory references hereafter are to the Government Code.

² Sections 25450-25469 constitute article 5 of chapter 5 of part 2, division 2, Title 3 of the Government Code.

³ The \$4,000 amount is applicable to counties or less than 500,000 in population: counties with greater populations have higher threshold figures. (See §§ 25450.4, 25450.41, 25457.4: see also §§ 25457, 25469.)

competitive bid.

Specifically, section 2 5450 provides: “Whenever the estimated cost of any public building . . . exceeds the sum of four thousand dollars . . . the work shall be done by contract. Any such contract not let pursuant to this article is void.” Section 25452 provides the procedures for soliciting the bids, and section 25454 states, “the board shall award the contract to the lowest responsible bidder”

Under extremely limited circumstances inapplicable herein, this statutory scheme allows for the use of “day’s work” after the rejection of all bids as follows:

“If the board of supervisors is advised by the county surveyor or engineer that any wharf, chute, or other shipping facility can be constructed or repaired for a sum less than the lowest responsible bid, it may reject all bids and order the work done by day’s work under the supervision and direction of the surveyor or engineer.” (§ 25456.)

Certain other exceptions to the competitive bidding requirements are provided in this legislation (see §§ 25458, 25465); however, no provision authorizes the use of county employees or day labor in connection with the public project proposed by the County of Tulare.

The other statutory scheme with which we are concerned, sections 25540–25547,⁴ is entitled “Public Bidding.” It generally requires that projects “for the erection, improvement, and repair of public buildings and works” (§ 25540.5, subd. (a)) “shall be let to contract by informal or formal bidding procedures” if the cost thereof is \$4,000–\$10,000, and “shall, in all instances, be let to contract by formal bidding procedure” if the cost thereof is \$10,000 or more. (§ 25541.5.) The requirements for soliciting informal bids are specified in section 25543 and those for formal bids in section 25543.5.

The significant departure between the two statutory schemes concerns the authority of a county to construct a public project after rejecting all bids submitted. Section 25544 states:

“In its discretion, the county may reject any bids presented. If, after the first invitation for bids, all bids are rejected, after reevaluating its cost estimates of the project, the county shall abandon the project or shall readvertise for bids in the manner prescribed by this article. *If after read*

⁴ Sections 25540–25547 constitute article 9 of chapter 5 of part 2, division 2, Title 3 of the Government Code.

advertising, the county rejects all bids presented, the county may proceed with the project by use of county personnel or may readvertise. If two or more bids are the same and the lowest, the county may accept the one it chooses. If no bids are received, the county may have the project done without further complying with this article.” (Emphasis added.)

Section 25544.5 states:

“Notwithstanding the provisions of Section 25544, if, after the first invitation for bids, all bids are rejected, the county may, after reevaluating its cost estimates of the project, pass a resolution by a four-fifths vote of its board of supervisors declaring that the project can be performed more economically by county personnel, or that in its opinion a contract to perform the project can be negotiated at a lower price in the open market. Upon adoption of the resolution, it may have the project done in the manner stated, without further complying with this article.” (Emphasis added.)

An apparent conflict thus exists between the provisions of sections 25450–25469 and 25540–25547. Under the former, competitive bidding is required for the project proposed herein by the County of Tulare, while under the latter, competitive bidding is excused once all bids have been rejected and the county has either readvertised or passed the appropriate resolution. Each statutory scheme specifies that compliance with its provisions is mandatory. (§§ 25450, 25540.)

Normally when construing statutes dealing with the same subject matter, the courts have attempted to harmonize them if at all possible. (*See California Mfgs. Assn. v. Public Utilities Com.* (1979) 24 Cal. 3d 836, 844; *Moyer v. Workmen’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) Where a conflict must be resolved, however, various rules of statutory construction are applied. (*See In re Thierry S.* (1977) 19 Cal. 3d 727, 738–744; *People v. Gilbert* (1969) 1 Cal. 3d 475, 479–480; *Santa Barbara Federation of Teachers v. Santa Barbara High Sch. Dist.* (1977) 6 Cal. App. 3d 223, 236.) These rules are designed to effectuate the Legislature’s intent with regard to the specific subject matter covered by the conflicting statutes. (*See Tripp v. Swoap* (1976) 17 Cal. 3d 671, 679; *Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645.)

Here, we need not apply any of the rules of statutory construction in an attempt to discern the legislative intent and resolve the impasse as to whether the provisions of sections 25450–25469 or 25540–25547 govern the question presented. The Legislature has expressly provided the manner in which the conflict is to be resolved, and we need only follow the legislative pronouncement directly applicable.

The key statute is section 25540, which provides as follows:

Notwithstanding any other provision of law, every county, whether general law or charter, containing a population of less than 500,000 shall employ bidding procedures on public projects as provided in this article. This article shall be liberally construed to effect its purposes. In the event of conflict with any other provision of law relative to bidding procedures, the provisions of this article shall apply.” (Emphasis added.)

The use of the phrase “notwithstanding any other provision of law” in section 25540 makes the provisions of sections 25540–25547 aid generis and controlling over other statutory and decisional law, including sections 25450–25469. (See *In re Marriage of Dover* (1971) 15 Cal. App. 3d 675, 678, fn 3; *State of California v. Superior Court* (1965) 238 Cal. App. 2d 691, 695–696.)

Consistent with this conclusion is the unmistakable mandate of section 25540 that “In the event of conflict with any other provision of law relative to bidding procedures, the provisions of this article shall apply.” Hence, to the extent that sections 25540–25447 allow for alternatives and exceptions to competitive bidding procedures where sections 25450–25469 do not, the former control the latter.⁵

Finally, it is apparent that while sections 25450–25469 mandate that competitive bidding procedures be followed in virtually every case regardless of consequences, sections 25540–25569 authorize and promote the construction of public projects where the application of competitive bidding procedures would not result in such construction. With this difference of legislative intent in mind, we note as consistent with our conclusion the directive of section 25540 that “This article shall be liberally construed to effect its purposes.”

Accordingly, the conclusion to the question presented is that a county with a population of less than 500,000 may use county personnel, juvenile court wards, county jail prisoners government work trainees, or negotiate for the construction of a public project in accordance with the provisions of sections 25544, 25544.5 and 25547, notwithstanding the provisions of section 25450.

⁵ We note that sections 25450-25469 provide an exception for construction at juvenile homes, ranches, or camps by juvenile court wards (§ 25465) and that sections 25540-25469 extends this exception to “public projects employing prisoners . . . and . . . involving persons engaged in federal, state, or county job or work training programs.” (§ 25547.)