

Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 1214 (Allen) – As Amended March 31, 2016

**SENATE VOTE:** 27-9

**SUBJECT:** University of California: Best Value Construction Contracting Program

**SUMMARY:** Eliminates the sunset on the authority of the University of California (UC) to use the best value procurement method at all its campuses and medical centers and permanently extends the authority of the UC to use this procurement method at all its locations. Specifically, **this bill:**

- 1) Deletes the sunset on the authority of the UC Regents to use the best value procurement method for projects over \$1 million.
- 2) Expands the authority of the UC Regents to use best value contracting at all locations of the UC.
- 3) Deletes obsolete reporting requirements.
- 4) Makes several technical and conforming changes.

**EXISTING LAW:**

- 1) Authorizes, until January 1, 2017, a pilot program at the UC to award construction contracts over \$1 million, on a "best value" basis, rather than just to the lowest bid (Public Contract Code (PCC) Section 10506.4).
- 2) Defines "best value," for purposes of the UC, as a procurement process whereby, the lowest responsible bidder may be selected on the basis of objective criteria with the resulting selection representing the best combination of price and qualifications (PCC Section 10506.5).
- 3) Requires the UC Regents, on or before January 1, 2016, to submit a report to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee, regarding the UC's best value pilot (PCC Section 10506.8).
- 4) Establishes a pilot program to authorize the Los Angeles Unified School District (LAUSD) to use a best value procurement method, before December 31, 2020, for public projects that exceed \$1 million, and requires submission of specified reports on the use of this procurement method (PCC Sections 20119 - 20119.7).

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:** History *UC Best Value Pilot*. Senate Bill 667 (Migden), Chapter 367, Statutes of 2006, created the UC Best Value Pilot, authorized for five years, solely at UC's San Francisco

campus (UCSF). SB 667 allowed UCSF to award contracts based on the best value for the university. Under this process, UC prequalifies bidders, then evaluates the bid based on answers to a separate best value questionnaire and assigns a qualification score. UC then divides each bidder's price by its qualification score. The lowest resulting cost per quality point represents the best value bid.

Senate Bill 835 (Wolk), Chapter 636, Statutes of 2011, extended the sunset in SB 667 and expanded the best value pilot to all UC campuses and medical centers for five more years; with a status report due to the Joint Legislative Budget Committee, on or before January 1, 2016.

According to the UC "Report on the Best Value Construction Contract Pilot Program", issued in December 2015, since January 2012, UC awarded over 320 construction contracts totaling \$4.05 billion. Forty of these contracts, or 13 percent, totaling \$1.19 billion, utilized the best value construction authority. Additionally, the report finds that given the additional time and administrative requirements associated with the best value selection process, the UC screens its projects carefully to maximize the value obtained from said process.

To note, according to the author's office, when SB 835 was initially debated in the Legislature, some legislators expressed concerns that granting best value authority to the UC would allow for subjectivity and favoritism to enter into the selection process. However, according to the report, "To date, no bidder, or third-party for that matter, has protested any qualification score determined by the University's BV [best value] Contractor Selection scoring committees." Lastly, the report finds that UC's best value pilot has fostered improved cooperative project administration, better quality work, less labor and safety violations, better qualified contractors, more on-time completion of projects, and increased on-budget performance.

*Need for the measure.* According to the author, "Best Value contracting is far more effective at selecting contractors who will provide the lowest finished cost as opposed to selecting contractors on the basis of the lowest first cost." The author contends that best value contracting has been met with praise from the design and contracting community and that the loss of UC's authority to offer best value contracting would be to the detriment of students, patients, researchers, faculty, and the taxpayers of California.

This measure seeks to permanently eliminate the sunset on UC's authority to be able to utilize a best value procurement process.

*Arguments in Support.* According to the UC, "the University continues to pursue increased efficiencies; use of best value has generated savings for UC campuses. These savings accrue from cost avoidance resulting from lack of bid protests, claims, and litigation." Additionally, UC contends that its experiences in utilizing best value has, "demonstrated that this method of contractor selection results in a higher success rate in terms of price, quality, and timely completion of capital projects. Removing the sunset on this program would allow UC to continue using best value for complex projects, such as those requiring a contract with unique skills or those where the performance of the contractor is critical in minimizing disruption to ongoing instruction, research, or healthcare activities."

*Arguments in Opposition.* According to State Building and Construction Trades Council, AFL-CIO (Building and Trades) and the California Labor Federation, "this measure does not contain important workforce requirements currently in law for other alternative delivery methods

including best value." Building and Trades and the California Labor Federation contend that in recent years, legislation has been enacted that created uniform provisions for, "the Department of General Services, the California Department of Corrections and Rehabilitation, local agencies, cities, and counties who choose to use DB [design build]. Subsequent legislation added identical requirements to lease-back, DB, and best value for K-12 education facilities, as well as best value pilot program for several counties."

*Requested amendment.* Building and Trades and California Labor Federation argue that in the wake of SB 693 (Hueso), which is currently moving through the Legislative Process, and seeks to consolidate and create uniformity among the skilled and trained workforce statutes, the UC should only be granted a one year sunset on their best value program in order to allow all entities to, "partner on improvements to UC's best value program in the next Legislative Session."

10506.4. (a) This article provides the Best Value Construction Contracting pilot Program for the Regents of the University of California for projects over one million dollars (\$1,000,000).

**~~Section 10506.9 of the Public Contract Code is repealed. 10506.9. This article shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, that is enacted before January 1, 2018, deletes or extends that date.~~**

*Related legislation.* SB 667 (Migden), SB 835 (Wolk) – as described above, and AB 1185 (Ridley-Thomas), Chapter 786, Statutes of 2015, which, among others, authorizes the Los Angeles Unified School District to utilize a best value procurement process as a pilot project until January 1, 2021, for construction projects over \$1 million.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

University of California

### **Opposition**

California Chapters of the National Electrical Contractors Association  
 California Labor Federation  
 California State Association of Electrical Workers  
 California State Pipe Trades Council  
 International Union of Elevator Constructors  
 State Building and Construction Trades Council  
 Western States Council of Sheet Metal Workers

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