

Date of Hearing: July 3, 2012

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Marty Block, Chair
SB 1280 (Pavley) – As Amended: June 26, 2012

SENATE VOTE: 33-0

SUBJECT: Public contracts: University of California and community college districts:
competitive bidding: best value.

SUMMARY: Authorizes a California Community College (CCC) district and the University of California (UC), until January 1, 2018, to let any contract for expenditures greater than \$50,000 and \$100,000, respectively for the purchase of supplies and materials in accordance with “best value” policies as adopted by the local governing board and UC Regents respectively. Specifically, this bill:

- 1) Authorizes CCC districts, until January 1, 2018, to use best value contracting, pursuant to policies adopted by the local governing board, for the purchase of supplies and materials when the expenditure exceeds \$50,000 and the district determines that it can expect long-term savings through the use of objective performance criteria other than price.
- 2) Defines “best value” as value determined by objective performance criteria that may include, but are not limited to:
 - a) Price features.
 - b) Long-term functionality.
 - c) Life-cycle costs.
 - d) Overall sustainability.
 - e) Required services to make operational for the community college.
 - f) Other criteria deemed appropriate by the community college district.
- 3) Requires that a CCC district adopting best value policies consider all of the following:
 - a) Price and service level proposals that reduce overall operating costs, including end-of-life expenditures and impacts.
 - b) Equipment, services, supplies and materials standards that support strategic acquisition and management program direction.
 - c) A procedure for bid protest and resolution.
- 4) Authorizes consideration of the following factors:

- a) Total cost to the district, as specified.
 - b) Operational cost or benefit as a result of a contract award.
 - c) Added value to the district of vendor-added services.
 - d) Quality and effectiveness of supplies, materials, and services.
 - e) Reliability of delivery or installation schedules.
 - f) Terms and conditions of product warranties and vendor guarantees.
 - g) Financial stability of the vendor.
 - h) Vendor's quality assurance program.
 - i) Vendor experience.
 - j) Consistency of the vendor's program, as specified, with the district's supplies and materials procurement program.
 - k) Economic benefits to the local community, including, but not limited to job creation or retention.
 - l) Environmental benefits to the local community.
- 5) Requires the contract be awarded to the bidder whose proposal is determined, in writing, to be the best value to the CCC district based solely upon the criteria set forth in the request for proposal.
 - 6) Requires the local governing board to issue written notice of intent to award, as specified, and to publicly announce its award, identify the winning bidder and the details of the winning proposal, as specified, and with the notice and contract file sufficient to satisfy an external audit.
 - 7) Requires the CCC district to ensure all businesses have a fair and equitable opportunity to compete for and participate in district contracts and that discrimination, as defined in specified law, does not occur.
 - 8) Requires a CCC district opting to use this authority to report specified information by January 1, 2016, to the Chancellor's office, and requires the Legislative Analyst Office (LAO) to request this information and report to the Legislature, as specified, by January 1, 2017.
 - 9) Establishes parallel authority, requirements, and responsibilities to UC with the following differences:
 - a) Applies the best value authority to contracts of \$100,000 or more.

- b) Authorizes best value when UC determines it can expect long term savings through the use of life-cycle cost methodology, the use of more sustainable goods and material, and reduced administrative costs.
 - c) Defines “best value” as the most advantageous balance of price, quality, service, performance and other elements, as defined by UC and achieved as delineated in the bill.
 - d) Applies its provisions to all UC campuses, including medical centers, national laboratories, and any future UC locations.
 - e) Clarifies that the best value authority granted by this bill applies solely to the procurement of goods, materials, or services and prohibits its application to construction contracts.
- 10) Requires UC to provide specified information to the LAO before July 1, 2016, and requires LAO to report to the Legislature on the use of best value procurement by the UC, as specified, by February 1, 2017.
- 11) Sunsets the best value authorities extended to both CCC and UC on January 1, 2018.

EXISTING LAW:

- 1) Requires a CCC governing board to let any contract involving an expenditure of \$50,000 or more for purchase of equipment, materials, supplies repairs and services, other than construction services, to the lowest responsible bidder or to reject all bids. (Public Contract Code § 20651)
- 2) Requires that the UC Regents let any contract involving an expenditure of \$100,000 or more for purchase of equipment, materials, supplies repairs and services, other than construction services, to the lowest responsible bidder or to reject all bids. (PCC § 10507.7)
- 3) Authorizes UC to use best value for construction projects valued over \$1 million until January 1, 2017. (PCC § 10506.4)
- 4) Authorizes school districts to consider, in addition to price, factors such as vendor financing, performance reliability, standardization, life-cycle costs, delivery timetables, support logistics, the broadest possible range of competing products and materials available, fitness of purchase, manufacturer’s warranties, and similar factors in the award of contracts for technology, telecommunications, related equipment, software, and services, in recognition of the highly specialized and unique nature of these items and services, and the rapid technological changes they undergo. Existing law specifically limits this authority to the procurement this type of equipment and prohibits its application to contracts for construction or the procurement of any product available in substantial quantities to the general public. (PCC § 20118.2.)
- 5) Authorizes Municipal Utility Districts to let contracts for the purchase of supplies and materials in excess of \$50,000 in accordance with “best value at the lowest cost acquisition” policies adopted by the local governing board and outlines specific elements to be included in these policies. (Public Utilities Code § 12751.3)

FISCAL EFFECT: This bill was approved by the Senate Appropriations Committee pursuant to Senate Rule 28.8.

COMMENTS: Need for this bill. According to the author, UC and CCC can only consider up-front costs for the acquisition of materials, equipment, services, and supplies. In many cases, this process prevents these public institutions from purchasing products in the most cost effective manner. This bill would allow, on a five-year pilot basis, UC and CCC to structure a competitive bid process using best value procurement, allowing them to consider factors such as life-cycle costs, servicing costs, durability, and factors other than price. In order to stretch their scarce funds, UC and CCC should have the flexibility necessary to be able to make wise procurement decisions.

Use of best value in California. This bill proposes best value contracting for the acquisition of goods and services. While this would be the first attempt authorized for educational entities, best value has been authorized and used in other instances.

- 1) Best value contracting for goods and services. The provisions of this bill are generally patterned after the authority extended to Municipal Utility Districts (MUDs) which appear to be the only sector of state government currently authorized to use best value contracting for the acquisition of goods and services. AB 793 (Cox), Chapter 665, Statutes of 2001, authorized MUDs to use best value procurement for individual supplies and materials purchased over \$50,000 until 2007. SB 1169 (Cox), Chapter 248, Statutes of 2006, extended this authority on a limited basis, making the statute permanent for those that used the process before January 1, 2006. However, any MUD that did not use the "best value" contract process prior to January 1, 2006, but has since elected to use the process, must have submitted a specified report to the LAO on or before January 1, 2011. If best value contracting was not utilized by a MUD during this period, the authority to do so expired on January 1, 2012.
- 2) Best value contracting in construction projects. Best value contracting has generally been recognized as a viable alternative for construction projects. Traditionally, construction projects have been bid out and awarded based upon a "lowest-cost" approach. Best value, a competitive contracting process, allows projects to be awarded to the contractor offering the best combination of price AND qualifications, instead of just the lowest bid. In California, for example, design-build best value is a method of project delivery/procurement based on combining the requirements for designing and constructing a project into one contract. In addition to submitting bids for project cost, prospective design-build teams also submit technical proposals. The technical proposals are evaluated based on evaluation criteria, and scores are compiled. The scores are then used to weigh or adjust the submitted bid price. The contract is awarded to the design-build team with the best value. SB 1509 (Simitian), pending in the Assembly Education Committee, would eliminate the sunset on the authority of CCC and K-12 districts to use design-build for their construction projects. SB 835 (Wolk), Chapter 636, Statutes of 2011, authorized UC to use best value for construction projects valued over \$1 million until January 1, 2017, extending and expanding a pilot program established by SB 667 (Migden), Chapter 367, Statutes of 2006.
- 3) Best value contracting for technology equipment. Best value contracting has also been used for the acquisition of technology, telecommunications and related equipment. As noted in

the background of this analysis, school districts are granted this authority, but specifically prohibited from applying this authority to contracts for construction or to the procurement of any product available in substantial quantities to the general public. Similarly, MUDs serving more than 250,000 customers have been authorized to use best value procurements to acquire information technology and industry specific equipment. This specific authority was repealed in 2006.

Related LAO study. According to its 2006 statutorily required report on the use of best value procurement by MUDs, the LAO opines that best value procurement can provide MUDs with an important tool. The LAO also notes that an organization must make the up-front investment necessary to support such procurement through staff training and develop procurement requirements that promote the organization's strategic goals. The LAO also noted that, early on, best value procurements could be time-consuming and cumbersome as bid evaluation criteria are developed and fine-tuned.

Prior legislation. This bill is almost identical to AB 2448 (Furutani, 2010) and AB 2550 (Furutani, 2008), with the exception that these bills did not include the provisions regarding UC. Both bills were vetoed by the Governor Schwarzenegger, whose veto messages read, in pertinent part:

AB 2448 (Furutani, 2010): This bill is substantially the same as legislation I have vetoed in the past because it may allow subjective methods to govern the bidding process for procurement of supplies and materials, which could be more open to manipulation and abuse in the ultimate bid selection. Such abuse could lead to non-competitive bidding and higher costs to the State's taxpayers and community college students.

AB 2550 (Furutani, 2008): I support the notion that best value contracting is a reasonable alternative for construction projects which allows projects to be awarded based on a combination of best price and qualifications because construction projects represent a large, long term investment of resources. However, I am concerned that this legislation may allow subjective methods to govern the bidding process for procurement of supplies and materials with a relatively short life cycle, which could be more open to manipulation and abuse in the bid selection process.

REGISTERED SUPPORT / OPPOSITION:

Support

Community College League of California
Glendale Community College District
Kern Community College District
Los Angeles Community College District
Peralta Community College District
San Diego Community College District
San Jose-Evergreen Community College District
West Kern Community College District
Yosemite Community College District

Opposition

None of file.

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