

Date of Hearing: April 17, 2018

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 3186 (Medina) – As Introduced February 16, 2018

**SUBJECT:** Public postsecondary education: University of California: California Community Colleges: competitive bidding: best value

**SUMMARY:** Allows the University of California (UC) and California Community Colleges (CCC) to continue using best value contracting by eliminating the January 1, 2019 repeal date and removing reporting requirements.

**EXISTING LAW:**

- 1) Requires the Regents of the University of California, except as provided, to let all contracts involving an expenditure of more than \$100,000 annually for goods and materials or services to the lowest responsible bidder meeting certain specifications, or to reject all bids. (Public Contract Code (PCC) Section 10507.8.)
- 2) Existing law requires the governing board of any community college district to let specified contracts involving an expenditure of more than \$50,000 to the lowest responsible bidder meeting certain specifications, or else reject all bids. Existing law, until January 1, 2019, provides that the bid evaluation and selection for these contracts may be determined by the best value for the University of California or the community college district, as specified. Existing law makes a violation of these provisions relating to the University of California a crime. (PCC Section 20651.7.)
- 3) Existing law provides for the University of California and the California Community Colleges to report to the Legislative Analyst regarding the use of best value procurement, and requires the Legislative Analyst to report to the Legislature in this regard by February 1, 2018. (PCC Sections 10507.8. and 20651.7.)
- 4) 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 Section 20651)
- 5) 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)
- 6) Authorizes UC to use best value for construction projects valued over \$1 million. (PCC Section 10506.4)
- 7) 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 Section 20118.2.)

- 8) 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:** Unknown. This bill is keyed fiscal.

**COMMENTS:** *Need for the bill.* According to the author, “AB 3186 seeks to allow the CCC’s and UC’s to continue using the best value procurement method by eliminating the sunset date. The ability for UC’s and CCC’s to structure a competitive bid process that recognizes life cycle cost, sustainable characteristics and efficiency in acquisition process will allow them to stretch scarce funds as far as possible by giving them the flexibility to make wise procurement decisions.”

*Background.* SB 1280 (Pavley) Chapter 708, Statutes of 2012, authorized the CCC and the UC to use best value procurement methodology on a pilot basis for five years. The best value procurement methodology pilots allowed CCC and UC to consider non-cost factors, such as quality and experience, when selecting vendors, rather than having to select the lowest-cost bidder. The current statute required CCC and UC to develop best value policies specifically to the procurement of goods, materials or services and report information about contracts produced during the pilot period. The Legislative Analyst Office (LAO) was required to review the pilot program, and that report was issued in December of 2017.

*LAO report findings.* The LAO’s report, titled “An Evaluation of Best Value Procurement Pilot Programs” found that UC considered non-cost factors in the procurement of goods and services before the pilot. Prior to the pilot, UC used an alternative procurement method called “Cost Per Quality Point” (CPQP). During the pilot period, UC continued to use CPQP, using it more frequently than best value. Specifically, CPQP accounted for 42 percent of reported contracts during the period, while best value accounted for 14 percent of such contracts. Though UC did not heavily rely on best value during the pilot period, the LAO believed UC’s use of it was reasonable and generally recommended making UC’s best value authority permanent.

That LAO’s support of UC’s use of best value did come with some recommendations. LAO noted that UC to develop a more comprehensive written set of policies that reflect best practices for BV procurement. To promote transparency in procurement, LAO recommended this revised policy should be available on UC’s website for the vendor community and public to access. The LAO also recommended that UC phase out the CPQP alternative procurement method.

The LAO also reported that no CCC’s chose to participate in the pilot, and thus did not report any findings to LAO. Citing the benefits that best value procurement can have in some cases, the LAO recommended continuing to authorize the CCC to offer best value on a pilot basis.

*Arguments in support.* UC is the sponsor of this legislation, and writes that “...under traditional procurement processes, the University is required to award contracts to the lowest responsible bidder, thereby limiting its consideration to lowest price as the primary factor. Best Value is an alternative procurement methodology that is increasingly being used by other entities for certain types of goods and services where consideration of criteria other than the lowest unit cost would significantly improve the total value of a purchase.

With lowest price procurement methodology, organizations often pay more over time if the quality of a good or service is poor, or if additional factors that were not calculated into the price of a product during the bid evaluation process increase costs over time. These factors include but are not limited to: freight, delivery, maintenance, warranty terms, service, training, energy usage, payment terms and end-of-life disposal costs... The LAO completed their review in December of 2017, concluding that UC had implemented the pilot program effectively – and recommended that the Best Value authority be granted to the University on a permanent basis.

*Prior legislation.* SB 1280 (Pavley) Chapter 708, Statutes of 2012, is described above in the “Background” section of this analysis.

SB 1280 was 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**

Los Rios Community College District  
University of California (Sponsor)

### **Opposition**

None on file

**Analysis Prepared by:** Kevin J. Powers / HIGHER ED. / (916) 319-3960