

Date of Hearing: March 19, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 356 (Santiago) – As Amended March 11, 2019

SUBJECT: Los Angeles Community College District: best value procurement: pilot program

SUMMARY: Authorizes the Los Angeles Community College District (LACCD) to utilize a best value procurement process as a pilot project until January 1, 2025, for construction projects over \$1 million. Specifically, **this bill:**

- 1) Expresses the intent of the Legislature to enable the LACCD to use cost-effective options for building and modernizing community college facilities.
- 2) Finds and declares that the Legislature has recognized the merits of best value procurement through its authorization of the method by the University of California (UC).
- 3) Specifies that the bidder may be selected on the basis of the best value to the governing board of the community college district. Requires the governing board of the community college district to adopt and publish procedures and required guidelines for evaluating the qualifications of the bidders that ensure the best value selections by the community college district are conducted in a fair and impartial manner. Requires procedures and guidelines to conform to this article and to be mandatory for the community college district when using best value selection.
- 4) Specifies that if the governing board of the community college district deems it to be for the best interest of the school district, the governing board of the school district, on the refusal or failure of the selected bidder for a project to execute a tendered contract, may award it to the bidder with the second lowest best value score. If the second bidder fails or refuses to execute the contract, the governing board of the community college district may likewise award it to the third lowest best value score.
- 5) Authorizes the governing board of the community college district to let any contract for a project, as specified, to the selected bidder that represents the best value or else reject all bids.
- 6) Specifies that if the community college district elects to award a project pursuant to this bill, retention proceeds withheld by the district from the selected best value contractor shall not exceed 5% if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.
- 7) Specifies that in a contract between the selected best value contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld shall not exceed the percentage specified in the contract between the district and the selected best value contractor.
- 8) Provides that all subcontractors that are identified in the proposal shall be afforded protections under the Subletting and Subcontracting Fair Practices Act.

- 9) Requires the governing board of a school district to use specified procedures when awarding best value contracts.
- 10) Requires the selection of the best value contractor to be made as follows:
- a) The school district shall evaluate the qualifications of the bidders based solely upon the criteria set forth in the solicitation documents, and shall assign a qualification score to each bid;
 - b) Qualification scores shall be determined by using only the criteria and selection procedures specifically identified in the request for proposals. The following minimum factors, however, shall be weighted as deemed appropriate by the community college district:
 - i) Relevant experience;
 - ii) Safety record; and,
 - iii) Other factors identified in the request for proposal.
 - c) To determine the best value contractor, the community college district shall divide each bidder's price by its qualifications score. A preference of up to 5 percent shall be applied to the price of a bid submitted by a small business, as defined by the community college district, before dividing the bidder's price by its qualification score. The lowest resulting cost per quality point will represent the best value bid. The award of the contract shall be made to the bidder whose bid is determined, by the community college district in writing, to be the best value to the community college district;
 - d) The community college district shall issue a written decision of its contract award or else reject all bids; and,
 - e) Upon issuance of a contract award, the community college district shall publicly announce its award identifying the project, the project price, the best value contractor to which the award is made, as well as the prices, qualification scores, and resulting costs per qualification point for all responsive bidders. The contract file shall include documentation sufficient to support the decision to award.
- 11) Requires a community college district that uses the best value procurement method to submit to the appropriate policy and fiscal committees of the Legislature an interim and final report on the use of the best value procurement method, as specified. The reports shall be prepared by an independent third party and the community college district shall pay for the cost of the report.
- 12) Specifies that the best value procurement method is not intended to change any guideline, criterion, procedure, or requirement of the governing board of the community college district to let a contract for a project to the lowest responsible bidder or else reject all bids.
- 13) Sunsets the pilot on January 1, 2025.

EXISTING LAW:

- 1) Authorizes Los Angeles Unified School District (LAUSD) to use best value procurement for projects over one million dollars on a pilot basis (Public Contract Code (PCC) Section 20119.2).
- 2) Authorizes the UC to use best value procurement for projects over one million dollars (PCC Section 10506.4).
- 3) Defines "skilled and trained workforce", in part, as, all the workers performing work in an apprenticeable occupation in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations. (PCC Section 2601).
- 4) Stipulates that the above skilled and trained workforce requirements do not apply if any of the following requirements are met:
 - a) The public entity has entered into a project labor agreement (PLA), as specified;
 - b) The design-build project is being performed under the extension or renewal of a PLA entered into prior to January 1, 2017; and,
 - c) The design-build entity has entered into a PLA binding the entity and all its subcontractors to use a skilled and trained workforce. (Education Code Sect. 17250.25(c)(2), PCC Sections 10191(c)(2) and 22164(c)(2).)

FISCAL EFFECT: Unknown.

COMMENTS: *Purpose.* According to the author, "...under PCC Section 20651, the governing board of a school district must award to the lowest responsible bidder any contract for a public project involving an expenditure of \$15,000 dollars or more. AB 356 would allow LACCD to award contracts based on best value rather than simply awarding to the lowest bidder. This bill will empower LACCD to consider qualifications other than just price. The current lowest bidder process prevents community colleges from evaluating bidders based on prior experience, their record of compliance with health and safety regulations, level of skill, etc. This bill will ensure that LACCD can consider the bidder's overall qualifications in addition to price, which can minimize project delays and lead to fewer change orders."

Background. Under current law, community college districts are required to competitively bid any public works contract over \$15,000 and award the contract to the lowest responsible bidder. Under the traditional method for school facility construction, a district would first hire an architect to design a school facility and then issue a bid for the construction phase, awarding the contract to the lowest bidder. This process is commonly called "design-bid-build".

Best Value pilot programs. This bill is based on SB 667 (Migden), Chapter 367, Statutes of 2006, which established a five-year best value pilot program for the UC. SB 835 (Wolk), Chapter 636, Statutes of 2011, extended the sunset in SB 667 until January 1, 2017, and expanded the best value pilot to encompass all UC campuses and medical centers.

Under this program, UC prequalifies bidders, then evaluates the bid and assigns a qualification score based upon five factors, which include the bidder's financial condition, relevant experience, demonstrated management competency, labor compliance, and safety record. UC then divides each bidder's price by its qualification score, and the lowest resulting cost per quality point represents the best value bid. AB 1424, Chapter 850, Statutes of 2017, removed the sunset on UC's program while also amending law to conform UC's best value contracting provisions to similar statutes for other government entities with respect to requirements for use of a skilled and trained workforce.

In a December 2015 report on the pilot project, UC noted that, since January 2012, it had awarded over 320 construction contracts totaling \$4 billion. Forty of these contracts, or 13%, totaling \$1.2 billion, utilized the best value construction authority. UC reported that these contracts provided numerous benefits, including decreases in bid protests, disputes, change order requests and claims, and reduced administrative oversight and contract/project management staff time.

LAUSD implemented a pilot program in AB 1185 (Ridley-Thomas), Chapter 786, Statutes of 2015, that is substantively similar to the pilot proposed in this legislation. That legislation called for an interim report, which was published in June of 2018. The report found that since January 1, 2016, LAUSD awarded nine construction contracts totaling more than \$185 million dollars—or 19 percent of LAUSD construction contracts awarded—following the best value procurement method.

The types of contracts awarded using this method range from the removal and replacement of heating, ventilation, and air conditioning systems to the modernization of existing buildings or ancillary structures to the complete design and construction of new buildings and facilities.

For the one completed best value procured project to date, the report found that change orders affecting budgets and schedule delays were minimized as compared to formal traditional bids. Additional benefits of the best value process were cited as including more qualified proposers, an open dialogue resulting in better project approach, and increased quality of subcontractors.

What does this bill do? This bill establishes a best value procurement process as a pilot project for LACCD, in addition to awarding contracts through the traditional design-bid-build process. "Best value" is defined as a procurement process whereby the selected bidder may be selected on the basis of objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications. The authority applies to projects over \$1 million and will enable LACCD to consider other factors, in addition to cost, in awarding construction contracts.

Guidelines. This bill requires LACCD to adopt procedures and required guidelines for evaluating the qualifications of bidders to ensure that the process is fair and impartial. A prequalification process based on a questionnaire and a rating scale is required, although LAUSD already uses a prequalification process. The solicitation for bids will invite prequalified bidders to submit sealed bids. The solicitation for bids must also include information on how the community college district will be evaluating the qualification of bidders, including the criteria that will be used, the methodology and the rating or weighting system that will be used, and the weight that will be assigned to the criteria for evaluation.

Qualification score. Similar to UC's and LAUSD's best value pilot program, this bill requires the LACCD to evaluate the qualification of the bidders solely upon the criteria specified in the solicitation documents and assign a qualification score to each bid. A bidder's price is divided by the qualification score received by the bidder. The bidder with the lowest cost per quality point represents the best value bid.

The factors required to be used by this bill are slightly different than the factors used in the UC pilot program. The factors used by the UC included the bidder's financial condition, relevant experience, demonstrated management competency, labor compliance, and safety record. This bill specifies the use of relevant experience, safety record, and other factors identified in the request for proposal in determining the qualification score. Relevant experience and safety record are factors commonly used in the questionnaire for prequalification.

Arguments in support. LACCD, the Sponsor of this legislation, notes that "...AB 356 will ensure that LACCD's access to high quality cost-effective construction projects. As the country's largest community college district and one of its most diverse, the best value procurement method will allow LACCD to provide its millions of students with high quality facilities which enhance their overall education and experiences."

The State Buildings and Construction Trades Council of California writes that they "...support providing public agencies that work in close collaboration with our affiliated unions and local building and construction trade councils with another tool in the toolbox to deliver fiscally responsible projects. In addition, the use of this option would require a skilled and trained workforce that ensures quality construction and creates apprenticeship opportunities for the next generation of building trades workers.

Arguments in opposition. The Associated Builders and Contractors, Inc. of Northern California write in opposition that, "...while we support the idea of best value procurement methods, this bill contains provisions that allows a contractor under a project labor agreement to be presumed to meet the requirements of using a skilled and trained workforce."

"Project labor agreements are troublesome for ABC Nor Cal member companies. Project labor agreements create barriers for local, minority, and women-owned construction employers and their employees from participating in building their community because they contain provisions that do not allow for the complete utilization of their workforces."

Prior legislation. AB 1424 (Levine), Chapter 850, Statutes of 2017, made permanent the authority for UC to use best value contracting for construction projects; and, when using best value contracting, requires contractors and all subcontractors to conform with the skilled and trained workforce requirements applicable to alternative construction delivery methods authorized in statute for use by other state or local government entities

SB 1214 (Allen), Chapter 788, Statutes of 2016, extended the sunset for UC's Best Value Construction Contracting Pilot Program by one year, until January 2018.

AB 1185 (Ridley-Thomas), Chapter 786, Statutes of 2015, authorized LAUSD to utilize a best value procurement process as a pilot project until January 1, 2021, for construction projects over \$1 million.

SB 693 (Hueso), Chapter 774, Statutes of 2016, consolidated the skilled and trained workforce requirements of various provisions of law related to alternative construction delivery methods, defined the terms of these requirements, and made other conforming changes.

SB 835 (Wolk), Chapter 636, Statutes of 2011, extended the sunset of UC's Best Value Construction Contracting Pilot Program until January 2017, and expanded the pilot to all UC campuses and medical centers.

SB 667 (Migden), Chapter 367, Statutes of 2006, established the five-year Best Value Construction Contracting Pilot Program at UC San Francisco.

REGISTERED SUPPORT / OPPOSITION:**Support**

Los Angeles Community College District (Sponsor)
State Buildings and Construction Trades Council of California

Opposition

Associated Builders and Contractors, Inc. of Northern California

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