
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: AB 1185
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Urgency: No
Consultant: Kathleen Chavira
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Fiscal: No

Subject: Los Angeles Unified School District: best value procurement: pilot program

NOTE: This bill has been referred to the Committee on Education and the Committee on Appropriations. A "do pass" motion should include referral to the Committee on Appropriations.

SUMMARY

This bill, 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.

BACKGROUND

Existing law requires the governing board of a school district, to competitively bid, and award to the lowest responsible bidder, any contract for a public project (as defined) involving an expenditure of \$15,000 or more. (Public Contract Code § 20111)

Existing law, until January 1, 2017 authorizes a pilot program at the University of California (UC) to award construction contracts on a "best value" basis, rather than just to the lowest bid. (Public Contract Code §10506.4)

Existing law 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. (Public Contract Code § 10506.5)

ANALYSIS

This bill:

- 1) Authorizes the governing board of the Los Angeles Unified School District (LAUSD), before December 31, 2020, to use best value procurement for projects over \$1 million.
- 2) Generally outlines the definitions, policies, and procedures to be followed by the LAUSD consistent with current law provisions applicable to best value contracting by the UC (Public Contract Code, Chapter 2.1, Article 1.5, commencing with § 10506.4) and additionally requires that:

- a) Specified “skilled and trained workforce” requirements are met.
 - b) Specified proceeds retention and surety bond conditions are met.
 - c) Subcontracting fair practices are followed.
 - d) Los Angeles Unified School District (LAUSD) weigh, at minimum and as deemed appropriate, factors such as relevant experience, acceptable safety record and other factors identified in a request for proposal in determining qualification scores for each bid, and specifically assign preference of up to 5% to small businesses, as defined by the LAUSD.
- 3) Establishes the following additional definitions for purposes of the pilot:
- a) “Best value score” as the resulting score when the bidder’s price is divided by the bidder’s qualification score.
 - b) “Skilled journeyman” as a worker who either graduated from an applicable apprenticeship program which met specified state or federal approval requirements, or had at least as many hours of on-the-job experience in an applicable occupation as would be required for graduation from a state-approved apprenticeship program.
 - c) “Apprenticeable occupation” as an occupation for which the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations had approved an apprenticeship program before January 1, 2015.
 - d) “Skilled and trained workforce” as a workforce in which all the workers are skilled journeymen or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the Department of Industrial Relations and establishes the following phased-in implementation of the proportion of skilled journeymen and subcontractors at every tier, employed that must be approved apprenticeship program graduates to meet the condition of having a “skilled and trained workforce”:
 - i) At least 30% by January 1, 2016.
 - ii) At least 40% by January 1, 2017.
 - iii) At least 50% by January 1, 2018.
 - iv) At least 60% by January 1, 2019.
 - v) At least 70% by January 1, 2020.
- 4) Provides that, for an apprenticeable occupation with no approved program prior to January 1, 1995, up to one-half of the apprenticeship program graduate percentage requirements may be met by skilled journeymen who commenced work in the occupation prior to the approval of an applicable apprentice program in the county of the project’s location.
- 5) Prohibits the prequalification or shortlisting of a best value entity absent an enforceable commitment to use a skilled and trained workforce for all work on the project/contract as applicable and provides that this commitment may be established by:

- a) An agreement between the entity and the school district governing board to comply with these requirements and the provision of monthly evidence demonstrating such compliance during the performance of the project/contract.
 - b) A project labor agreement (PLA), entered into by the school district governing board, that includes these requirements and that binds all contractors/subcontractors working on the project/contract and agreement by the entity to become a party to the PLA.
 - c) Evidence that the entity has entered into a PLA that includes these requirements and that binds the entity and all its subcontractors at every tier performing the project/contract.
- 6) Establishes related reporting requirements. More specifically it:
- a) Requires the Los Angeles Unified School District (LAUSD) to submit an interim report and a final report, conducted by an independent third party, containing specified information on the use of best value to the Legislative Analyst's Office (LAO) by July 1, 2018, and January 1, 2020, respectively.
 - b) Requires the LAO to submit an interim report and a final report, on the use of best value, as specified, to the appropriate policy and fiscal committees of the Legislature by January 1, 2019, and July 1, 2020, respectively, to evaluate whether the best value procurement method should be continued, expanded, or prohibited.
- 7) Clarifies that the best value procurement method is not intended to change guideline, criterion, procedure, or requirement of the governing board to let a project contract to the lowest responsible bidder other than those specifically provided for in the bill's provisions.
- 8) Sunsets these provisions on January 1, 2021.

STAFF COMMENTS

- 1) **Need for the bill.** According to the author, this bill will empower LAUSD to consider qualifications other than just price. The current lowest bidder process restricts the ability of school districts to evaluate bidders on the basis of prior school construction experience, previous violations of health and safety laws, disqualification or removal from prior school construction jobs, and financial stability. This bill can ensure that the district can consider the bidder's experience or knowledge to navigate the school construction process when selecting a contractor, minimizing project delays and cost overruns.
- 2) **Best Value Pilot Program.** SB 667 (Migden), Chapter 367, Statutes of 2006, established a pilot program for the University of California (UC). Initially authorized for five years, the bill allowed the UC San Francisco 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.

In a report to the Legislature in January 2010, the University of California (UC) reported that 23 contracts totaling \$158.3 million were issued under the best value pilot program. Of the 23 contracts, 12 contracts were low bid contracts. According to the report, the "University Representatives for all these projects [four completed and two almost completed projects] have been unanimous in their praise of this process that has already demonstrated numerous advantages such as decreased bid protests and communication problems, decreased the need for multiple inspections and re-work, decreased disputes, change order requests, claims and litigation and increased incentives for contractors to perform their work safely and to adhere to high labor and quality standards." UC concludes that the best value pilot program fosters better quality work, less labor and safety problems, better qualified persons/contractors, better on-time completion, and better on-budget performance. In 2011, SB 835 (Wolk, Chapter 636, Statutes of 2011), expanded the authority to all UC campuses and extended the sunset from January 1, 2012, to January 1, 2017.

The provisions of this bill are generally based upon the pilot program authorized for the UC, but codify more prescriptive requirements around labor, contractors and subcontractors, and the weighting of certain factors in the evaluation of bids.

- 3) **Skilled workforce provisions.** The provisions of this bill relative to a skilled workforce are very similar to recently adopted provisions regarding the use of a design-build method for awarding public works contracts by state and local agencies (SB 785, Chapter 931, Statutes of 2014), as well as contracts for the construction, alteration, demolition, installation, repair, or maintenance work at petroleum refineries (SB 54, Chapter 795, Statutes of 2013). In addition, these provisions were a component of SB 566 (O'Donnell), which was heard and passed by this Committee on June 10, 2015, by a vote of 6-2.
- 4) **Fiscal implications.** To the extent this bill results in the awarding of contracts to other than the lowest bidder, contracting costs could increase. It is unclear whether the resultant savings from reduced change orders and delays would offset these costs. Staff notes that Legislative Counsel has identified this bill as non-fiscal. However, the Senate Rules Committee has referred the bill to the Senate Appropriations Committee, at their request. If it is the desire of the committee to move this bill, the bill should be referred to the Senate Appropriations Committee.
- 5) **Prior Legislation.** This bill is almost identical to AB 1971 (Bocanegra, 2014) which was heard and passed by this Committee in June 2014, by a vote of 4-1. AB 1971 was never acted upon on the Senate Floor.

SUPPORT

Los Angeles Unified School District

OPPOSITION

Air Conditioning Trade Association

Associated Builders and Contractors of California
Associated Builders and Contractors – San Diego Chapter
Plumbing-Heating-Colling Contractors Association of California
Western Electrical Contractors Association

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