
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 3186 **Hearing Date:** June 27, 2018
Author: Medina
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Urgency: No **Fiscal:** Yes
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Subject: Public postsecondary education: University of California: California
Community Colleges: competitive bidding: best value

SUMMARY

This bill allows, for the procurement of certain goods and services, the University of California (UC) and California Community Colleges (CCC) to continue using best value contracting for goods by eliminating the January 1, 2019, repeal date of the program pilot and removing related reporting requirements.

BACKGROUND

Existing law:

- 1) Requires the Regents of the UC, 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) § 10507.8.)
- 2) 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 UC or the community college district, as specified. Existing law makes a violation of these provisions relating to the UC a crime. (PCC § 20651.7.)
- 3) Provides for the UC and the CCC 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 § 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. (PCC § 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 University of California (UC) to use best value for construction projects valued over \$1 million. (PCC § 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 of 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.)
- 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)

ANALYSIS

This bill allows, for the procurement of certain goods and services, the UC and California Community Colleges (CCC) to continue using best value contracting for goods by eliminating the January 1, 2019, repeal date of the program pilot and removing related reporting requirements.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "best value is an alternative to a lowest cost procurement methodology that is increasingly being used by other entities for certain goods and services. According to a study by LAO on prior to the passage of SB 1280 (Pavely), the Sacramento Utility District 6, using the same UC best value procurement practices proposed in this bill, experience \$8 million in economic benefits over 13 contracts totaling \$27 million dollars. With lowest cost procurement, organizations ironically often pay more over time if the quality of a good or service is poor. Additionally, other factors that were not calculated into the price of the product during the bid evaluation process will increase cost over time. UC estimates that if they were allowed to use best value procurement they would save \$3 million annually. Should the program sunset at the end of 2019, UC would no longer be able to use this method of best value selection."

This bill proposes to permanently allow UC and CCC to utilize best value contracting for the acquisition of goods and services.

- 2) ***How it works.*** According to the Legislative Analyst's office, when procuring goods and services, the state seeks to promote fair and open competition that is free from bias and favoritism. To this end, statute includes various requirements for the procurement of goods and services, particularly those of significant

monetary value. Specifically, statute sets certain monetary thresholds above which agencies generally must use a competitive bidding process to advertise and solicit bids before selecting a vendor. Statute sets the competitive bidding threshold at \$50,000 for California Community Colleges (CCC). Pursuant to statute, CCC's level is adjusted annually for inflation and is currently at \$88,300. Statute sets the threshold for University of California (UC) at \$100,000. Under the best value approach, the state issues a solicitation for proposals. The state then verifies that the bidders are responsible and responsive. The proposals are then evaluated and scored based on cost as well as other criteria. The best value criteria can include factors such as lifetime costs, use of sustainable materials or practices, experience, timeliness, terms and conditions, or economic benefits to the community. The bidder with the highest score (not necessarily the lowest bid) receives the contract. Though not without its draw backs, best value procurement potentially can yield long-term state savings while avoiding the hassle of hiring vendors unlikely to perform adequately.

- 3) ***Legislative Analyst's Office (LAO) evaluation of UC and CCC best value pilot program.*** SB 1280 (Pavely, Chapter, statutes of 2012) required community college districts and UC to develop best value policies and report information about contracts procured during the pilot period. It further required the LAO to evaluate the pilots and recommend to the Legislature whether to continue CCC's and UC's best value authority after the January 1, 2019 sunset. In its 2017 statutorily required report, "An Evaluation of Best Value Procurement Pilot Programs," on the use of best value procurement by UC and CCC districts, the LAO finds and recommends the following:

UC

- Make UC's best value authority permanent but require UC to include additional best value best practices in its procurement policies.
- Have UC phase out alternative procumbent method.
- UC's overall procurement policies and specific best value policies are generally reasonable.
- UC's policies should include some additional guidance about best value best practices to help campuses implement the approach.
- UC generally selected best value vendors using a core set of reasonable evaluation criteria.
- Majority of best value contracts awarded to the lowest bidder.
- Remainder of best value contracts cost more up front but likely have long-term savings or qualitative benefits.
- Bid protests are rare

California Community College (CCC) districts

- Extend, rather than make permanent, the CCC pilot program and clarify statute to indicate that consideration of noncost factors in any procurement constitutes participation in the pilot.
- Simplify reporting requirements and require CCC to develop systemwide best value policies to promote the use of best practices among districts.
- No CCC districts participated in the best value pilot program. CCC provided Legislative Analyst's Office (LAO), three primary reasons for not reporting the statutorily required information to our office:
 - Since none of the districts reported changing procurement practices to use their new best value authority, they believed it was not necessary to report contract information.
 - Districts found the reporting requirements too cumbersome, particularly collecting information about past comparable lowest bidder contracts.
 - Some districts lacked the staff, expertise, and data systems necessary to compile the required information.

This bill's provisions mirror the LAO recommendation for UC but not for CCC. *Given that CCC districts best value procurement practices were not adequately vetted at CCC for lack of participation as noted in the LAO report and as such performance of best value contracting at CCCs could not be evaluated, the committee may wish to consider extending the sunset rather than making CCC authority permanent.*

4) **Prior legislation.**

SB 1280 (Pavely, 2012) authorized, until January 1, 2018, authorizes a CCC district and the UC 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.

SB 1280 (Pavely, 2012) almost identical to AB 2448 (Furutani, 2010) and AB 2550 (Furutani, 2008), with the exception that these bills did not include the provisions regarding the UC. Both bills were vetoed by the Governor 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.

SUPPORT

University of California
Community College Facility Coalition
Los Rios Community College District

OPPOSITION

None received

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