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# SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

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**Bill No:** AB 356 **Hearing Date:** June 12, 2019  
**Author:** Santiago  
**Version:** March 11, 2019  
**Urgency:** No **Fiscal:** No  
**Consultant:** Ian Johnson

**Subject:** Los Angeles Community College District: best value procurement: pilot program.

## SUMMARY

This bill provides for a five-year pilot program for the Los Angeles Community College District to use best value procurement for projects over \$1 million.

## BACKGROUND

Existing law:

- 1) Authorizes Los Angeles Unified School District 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 University of California 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))

## ANALYSIS

This bill:

- 1) Expresses the intent of the Legislature to enable the Los Angeles Community College District 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.
- 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 percent 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.

**STAFF COMMENTS**

- 1) ***Need for the bill.*** According to the author, "...under Public Contract Code 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 Los Angeles Community College District (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."
- 2) ***Best value contracting.*** Best value procurement is an alternative to the traditional design-bid-build method of public works contracting. Under this process, the district 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. The district then divides each bidder's price by its qualification score, and the lowest resulting cost per quality point represents the best value bid.
- 3) ***Report on pilot program from the University of California (UC).*** Prior to being granted permanent authority to use best value procurement, the University of California (UC) released a January 2016 report on the Best Value Construction Contract Pilot Program, which reported that the process had: (1) attracted thorough bids with an appropriate balance of focus on experience, quality, competency, and price; (2) increased the bidding pool of well-qualified and respected contractors, including many who had previously declined to bid on projects; (3) greatly eliminated bid risk to both the UC and contractors; and (4) reduced the number of change orders resulting from contractors underbidding projects.

Between 2012 and 2016, UC awarded over 320 construction contracts totaling over \$4 billion. Of these, 40 contracts totaling \$1.2 billion utilized best value contracting. Projects that were completed as of September 2015 have been assessed and have been delivered on time and on budget, with a high level of quality and no claims. Those projects experienced minor change orders, largely limited to owner requested changes and unforeseen conditions. This experience, albeit of limited scope thus far, points to the efficacy of the Best Value selection process.

- 4) ***Arguments in support.*** Supporters of this measure argue that it will ensure that Los Angeles Community College District has 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 the district to provide its millions of students with high quality facilities which enhance their overall education and experiences.

Further, the bill provides those that work in close collaboration with unions and local building and construction trade councils with another tool in the toolbox to

deliver fiscally responsible projects. Also, requiring the use of a skilled and trained workforce ensures quality construction and creates apprenticeship opportunities for the next generation of building trades workers.

- 5) ***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."

- 6) ***Prior legislation.***

AB 1424 (Levine, Chapter 850, Statutes of 2017) made permanent the authority for UC to use best value contracting for construction projects.

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

AB 1185 (Ridley-Thomas, Chapter 786, Statutes of 2015) authorized Los Angeles Unified School District 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.

## **SUPPORT**

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

## **OPPOSITION**

Associated Builders and Contractors, Northern California Chapter

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