

Senate Bill No. 835

Passed the Senate September 7, 2011

Secretary of the Senate

Passed the Assembly August 29, 2011

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 10506.4, 10506.5, 10506.6, 10506.7, 10506.8, and 10506.9 of, and to add Section 10506.10 to, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 835, Wolk. Public contracts: University of California: pilot program: best value procedures.

Existing law, until January 1, 2012, establishes the Best Value Construction Contract Pilot Program, which authorizes a single University of California campus located in the City and County of San Francisco to award construction contracts based on the best value procedures, as specified. Existing law requires the Regents of the University of California to adopt and publish procedures and required criteria, as specified, that ensure that all selections are conducted in a fair and impartial manner. Existing law also requires, on or before January 1, 2010, the Regents of the University of California to submit a report to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee regarding the pilot program, as specified. Existing law requires bidders to verify specified information under oath.

This bill would expand the pilot program described above to apply to all campuses of the University of California, including the medical centers, for projects over \$1,000,000. This bill would instead require the Regents of the University of California to adopt and publish procedures and required guidelines for evaluating the qualifications of the bidders to ensure that best value selections by the university are conducted in a fair and impartial manner. This bill would require the Regents of the University of California to submit a report on the pilot program before January 1, 2016. This bill would extend the pilot program until January 1, 2017. This bill would also make conforming changes to related provisions.

By extending the requirement that bidders verify specified information under oath, this bill would impose a state-mandated local program by expanding the scope of an existing crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 10506.4 of the Public Contract Code is amended to read:

10506.4. (a) This article provides for a pilot program for the Regents of the University of California for projects over one million dollars (\$1,000,000).

(b) The Regents of the University of California shall let any contract for a project pursuant to this article to the lowest responsible bidder or else reject all bids.

(c) The lowest responsible bidder may be selected on the basis of the best value to the university, as defined in Section 10506.5. In order to implement this method of selection, the Regents of the University of California shall adopt and publish procedures and required guidelines for evaluating the qualifications of the bidders that ensure that best value selections by the university are conducted in a fair and impartial manner. These procedures and guidelines shall conform to the requirements of Sections 10506.6 and 10506.7 and shall be mandatory for the university when using best value selection.

(d) If one or more of the bids is substantially equal to the lowest bid, and at least one of those bidders is a disadvantaged business enterprise, a women business enterprise, or a disabled veteran business enterprise, the regents may award the contract in accordance with the policies and procedures adopted pursuant to Section 10500.5.

(e) If the regents deem it to be for the best interest of the university, the regents may, on the refusal or failure of the successful bidder for a project to execute a tendered contract, award it to the second lowest responsible bidder. If the second lowest bidder fails or refuses to execute the contract, the regents may likewise award it to the third lowest responsible bidder.

SEC. 2. Section 10506.5 of the Public Contract Code is amended to read:

10506.5. For purposes of this article, the following definitions apply:

(a) “Best value” means a procurement process whereby the lowest responsible 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.

(b) “Best value contract” means a contract entered into pursuant to the provisions of this article.

(c) “Best value contractor” means a properly licensed person, firm, or corporation that submits a bid for, or is awarded, a best value contract.

(d) “Demonstrated management competency” means the experience, competency, capability, and capacity of the proposed management staffing to complete projects of similar size, scope, or complexity.

(e) “Financial condition” means the financial resources needed to perform the contract. The criteria used to evaluate a bidder’s financial condition shall include, at a minimum, capacity to obtain all required payment bonds, performance bonds, and liability insurance.

(f) “Labor compliance” means the ability to comply with, and past performance with, contract and statutory requirements for the payment of wages and qualifications of the workforce. The criteria used to evaluate a bidder’s labor compliance shall include, as a minimum, the bidder’s ability to comply with the apprenticeship requirements of the California Apprenticeship Council and the Department of Industrial Relations, its past conformance with such requirements, and its past conformance with requirements to pay prevailing wages on public works projects.

(g) “Qualifications” means financial condition, relevant experience, demonstrated management competency, labor compliance, the safety record of the bidder, and, if required by the bidding documents, some or all of the preceding qualifications as they pertain to subcontractors proposed to be used by the bidder for designated portions of the work.

(h) “Relevant experience” means the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity.

(i) “Safety record” means the prior history concerning the safe performance of construction contracts. The criteria used to evaluate a bidder’s safety record shall include, as a minimum, its experience modification rate for the most recent three-year period, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period.

(j) “University” means all campuses of the University of California, including the medical centers.

SEC. 3. Section 10506.6 of the Public Contract Code is amended to read:

10506.6. The university shall proceed in accordance with the following when awarding best value contracts under this article.

(a) The university shall prepare a solicitation for bids and give notice pursuant to Section 10502.

(b) The university shall establish a procedure to prequalify bidders. The information required pursuant to this section shall be verified under oath by the bidder in the manner in which civil pleadings in civil actions are verified. Information submitted by the bidder as part of the evaluation process shall not be open to public inspection to the extent that information is exempt from disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) Each solicitation for bids shall do all of the following:

(1) Invite prequalified bidders to submit sealed bids in the manner prescribed by this article.

(2) Include a section identifying and describing the following:

(A) Criteria that the university will consider in evaluating the qualifications of the bidders.

(B) The methodology and rating or weighting system that will be used by the university in evaluating bids.

(C) The relative importance or weight assigned to the criteria for evaluating the qualifications of bidders identified in the request for bids.

(d) Final evaluation of the best value contractor shall be done in a manner that prevents cost or price information from being revealed to the committee evaluating the qualifications of the

bidders prior to completion and announcement of that committee's decision.

SEC. 4. Section 10506.7 of the Public Contract Code is amended to read:

10506.7. Selection of the best value contractor shall be made as follows:

(a) The university shall evaluate the qualifications of the bidders based solely upon the criteria set forth in the solicitation documents, and shall assign a qualifications score to each bid.

(b) The award of the contract shall be made to the bidder whose bid is determined, by the university in writing, to be the best value to the university. To determine the best value contractor, the university shall divide each bidder's price by its qualifications score. The lowest resulting cost per quality point will represent the best value bid.

(c) The university shall issue a written decision of its contract award.

(d) Upon issuance of a contract award, the university shall publicly announce its award identifying the best value contractor to which the award is made, the project, the project price, and the selected best value contractor's score based on the qualifications criteria for evaluating the bidders listed in the request for bids. The notice of award shall be made public and include the score of the selected best value contractor in relation to all other responsive bidders and their respective prices. The contract file shall include documentation sufficient to support the decision to award.

SEC. 5. Section 10506.8 of the Public Contract Code is amended to read:

10506.8. On or before January 1, 2016, the Regents of the University of California shall submit a report to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee. The report shall include, but is not limited to, the following information:

(a) A description of the projects awarded using the best value procedures.

(b) The contract award amounts.

(c) The best value contractors awarded the projects.

(d) A description of any written protests concerning any aspect of the solicitation, bid, or award of the best value contracts, including the resolution of the protests.

(e) A description of the prequalification process.

(f) The criteria used to evaluate the bids, including the weighting of the criteria and an assessment of the effectiveness of the methodology.

(g) If a project awarded under this article has been completed, an assessment of the project performance, to include a summary of any delays or cost increases.

SEC. 6. Section 10506.9 of the Public Contract Code is amended to read:

10506.9. This article shall remain in effect only until January 1, 2017, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2017, deletes or extends that date.

SEC. 7. Section 10506.10 is added to the Public Contract Code, to read:

10506.10. Except as otherwise provided in this article, this article is not intended to change in any manner any guideline, criteria, procedure, or requirement of the Regents of the University of California to let any contract for a project to the lowest responsible bidder or else reject all bids.

SEC. 8. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Approved _____, 2011

Governor