

Senate Bill No. 1280

Passed the Senate August 31, 2012

Secretary of the Senate

Passed the Assembly August 23, 2012

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add and repeal Sections 10507.8 and 20651.7 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1280, Pavley. Public contracts: University of California and community college districts: competitive bidding: best value.

Existing law requires the Regents of the University of California, 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. Existing law 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 to reject all bids.

This bill would provide that, before January 1, 2018, the bid evaluation and selection for these contracts may be determined by the best value for the University of California or community college district, as specified.

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

SECTION 1. Section 10507.8 is added to the Public Contract Code, to read:

10507.8. (a) As provided for in this article, when the University of California determines that it can expect long-term savings through the use of life-cycle cost methodology, the use of more sustainable goods and materials, and reduced administrative costs, the lowest responsible bidder may be selected on the basis of the best value to the university. In order to implement this method of selection, the Regents of the University of California shall adopt and publish policies and guidelines for evaluating bidders that ensure that best value selections by the university are conducted in a fair and impartial manner. These policies and guidelines shall conform to the requirements of subdivisions (c) and (d) and shall be applicable to the university when using best value as the bid evaluation methodology.

(b) For the purposes of this section, the following definitions apply:

(1) “Best value” means the most advantageous balance of price, quality, service, performance, and other elements, as defined by the university, achieved through methods in accordance with this section and determined by objective performance criteria that may include price, features, long-term functionality, life-cycle costs, overall sustainability, and required services.

(2) “Best value agreement” means an agreement entered into pursuant to the provisions of this section.

(3) “Best value awardee” means the lowest responsible bidder or bidders that are awarded an agreement for goods, materials, or services that was awarded through the use of best value for the bid evaluation methodology.

(4) “Best value criteria” means those criteria set forth in subdivision (d).

(5) “University” means all current campuses and locations of the University of California, including the medical centers, the national laboratories, and any future University of California campuses and locations.

(c) (1) The university shall consider all of the following when adopting policies and guidelines pursuant to subdivision (a):

(A) Price and service proposals that reduce the university’s overall operating costs.

(B) Supply and material standards that support the university’s strategic sourcing initiatives.

(C) A procedure for bid protest and resolution.

(2) The university shall award a best value agreement as follows:

(A) The university shall evaluate bidders based solely upon the best value criteria set forth in the solicitation documents. Solicitation for bids shall describe the best value criteria that the university will consider in evaluating the bidders by overall category and by specific attributes.

(B) The university shall award the agreement to the lowest responsible bidder or bidders whose bid or bids are determined by the university to be the best value in terms of price, quality, service, and performance, and that meet the university’s requirements.

(C) Bid participants that are not awarded a best value agreement shall be notified in writing at the end of the agreement award process.

(d) For the purposes of this section, the university may take into consideration any of the following best value criteria when awarding a best value agreement for goods, materials, and services:

(1) The total cost to the university of its use or consumption of goods, materials, and services.

(2) The operational cost or benefit incurred by the university as a result of a contract award.

(3) The added value to the university, as defined in the request for proposal, of vendor-added services.

(4) The quality and effectiveness of goods, materials, and services.

(5) The use of more sustainable goods and materials in the manufacturing of the goods and materials and the packaging of these products.

(6) The reliability and timeliness of delivery and installation.

(7) The terms and conditions of product warranties, maintenance, and vendor guarantees.

(8) The vendor's quality assurance, continuous improvement, and business resumption programs and their benefit to the university.

(9) The vendor's experience with the timely provision of goods, materials, and services.

(10) The consistency of quality and availability of the vendor's proposed supplies, materials, and services with the university's overall procurement program.

(11) The economic benefits to the local community, including, but not limited to, job creation or retention and the support of small and local businesses.

(e) The university shall ensure that all businesses have a fair and equitable opportunity to compete for, and participate in, the university best value bids and shall also ensure that discrimination in the award and performance of the agreement does not occur on the basis of gender, marital status, ancestry, medical condition, or any characteristic listed or defined in Section 11135 of the Government Code, or retaliation for having filed a discrimination complaint or protest in the performance of university contractual obligations.

(f) (1) On or before July 1, 2016, the University of California shall provide the Legislative Analyst's Office with a list of the policies and procedures adopted pursuant to subdivision (a). In

addition, the university shall also collect and provide the following information to the Legislative Analyst's Office for each contract involving an expenditure of more than one hundred thousand dollars (\$100,000) for goods, materials, or services that was entered into on or after the effective date of this section:

(A) Whether the contract was awarded to the lowest responsible bidder or using best value.

(B) A description of the products, commodities, or services as defined in the bid solicitation.

(C) The names of the awardee or awardees of the agreement or agreements.

(D) The actual volume resulting from the agreements, or estimated volume if the agreements are less than one year old, of all purchases.

(E) A description of any written bid protest or protests concerning an aspect of the solicitation, bid, or award of the agreement, including the resolution of the protest.

(F) For each contract awarded using best value, the criteria used to evaluate the bids, as well as a summary of the rationale for awarding the contract.

(G) For each contract awarded using best value, a summary of any additional economic benefit other than the price of the contract, including an explanation of whether those benefits were realized as expected.

(H) For each contract awarded using best value, the university shall identify one or more comparable contracts awarded using the traditional lowest responsible bidder method, including, but not limited to, contracts awarded prior to the adoption of the best value acquisition policies.

(2) On or before February 1, 2017, the Legislative Analyst shall report to the Legislature on the use of best value procurement by the University of California. The Legislative Analyst shall use the information provided by the university to report all of the following:

(A) An assessment of any benefits or disadvantages of best value acquisition as compared to bids awarded to the lowest responsible bidder.

(B) An assessment of whether the use of best value procurement has led to a difference in the number of disputes as compared to

contracts awarded using the traditional lowest responsible bidder method.

(C) An assessment of the policies adopted by the university pursuant to subdivision (a), as well as an assessment of the performance criteria used by the university to evaluate the bids and the effectiveness of the methodology.

(D) A comparison of the overall cost of contracts let under best value acquisition pursuant to this section to similar contracts let under traditional low bid procurement practices.

(E) Recommendations as to whether the best value at lowest cost acquisition procurement authority should be continued.

(g) This section applies solely to the procurement of goods, materials, or services and shall not apply to construction contracts.

(h) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.

(i) 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 goods, materials, or services to the lowest responsible bidder meeting certain specifications or to reject all bids.

SEC. 2. Section 20651.7 is added to the Public Contract Code, to read:

20651.7. (a) For the purposes of bid evaluation and selection pursuant to subdivision (a) of Section 20651, when a community college district determines that it can expect long-term savings through the use of life-cycle cost methodology, the use of more sustainable goods and materials, and reduced administrative costs, the community college district may provide for the selection of the lowest responsible bidder on the basis of best value pursuant to policies and procedures adopted by the governing board in accordance with this section.

(b) For purposes of this section, “best value” means the most advantageous balance of price, quality, service, performance, and other elements, as defined by the governing board, achieved through methods in accordance with this section and determined by objective performance criteria that may include price, features, long-term functionality, life-cycle costs, overall sustainability, and required services.

(c) A community college district shall consider all of the following when adopting best value policies pursuant to subdivision (a):

(1) Price and service level proposals that reduce the district's overall operating costs, including end-of-life expenditures and impact.

(2) Equipment, services, supplies, and materials standards that support the community college district's strategic acquisition and management program direction.

(3) A procedure for protest and resolution.

(d) A community college district may consider any of the following factors if adopting policies and procedures pursuant to subdivision (c):

(1) The total cost to the community college district of its purchase, use, and consumption of equipment, supplies, and materials.

(2) The operational cost or benefit incurred by the community college district as a result of a contract award.

(3) The added value to the community college district, as defined in the request for proposal, of vendor-added services.

(4) The quality and effectiveness of equipment, supplies, materials, and services.

(5) The reliability of delivery and installation schedules.

(6) The terms and conditions of product warranties and vendor guarantees.

(7) The financial stability of the vendor.

(8) The vendor's quality assurance program.

(9) The vendor's experience with the provisions of equipment, supplies, materials, and services within the institutional marketplace.

(10) The consistency of the vendor's proposed equipment, supplies, materials, and services with the district's overall supplies and materials procurement program.

(11) The economic benefits to the local community, including, but not limited to, job creation and retention.

(12) The environmental benefits to the local community.

(e) A community college district awarding a contract under this section shall award a contract to the lowest responsible bidder whose proposal is determined, in writing by the community college

district, to be the best value to the community college district based solely on the criteria set forth in the request for proposal.

(f) The governing board of a community college district shall issue a written notice of intent to award supporting its contract award and stating in detail the basis of the award. The notice of the intent to award and the contract file must be sufficient to satisfy an external audit.

(g) The governing board of a community college district shall publicly announce its award, identifying the bidder to which the award is made, the price proposal of the contractor awarded the contract, and the overall combined rating on the request for proposal evaluation factors. The announcement shall also include the ranking of the contractor awarded the contract in relation to all other responsive bidders and their respective price proposals and summary of the rationale for the contract award.

(h) The community college district shall ensure that all businesses have a fair and equitable opportunity to compete for, and participate in, district contracts and shall also ensure that discrimination, as described in subdivision (e) of Section 12751.3 of the Public Utilities Code, in the award and performance of contracts does not occur.

(i) (1) If a community college district elects to purchase equipment, materials, supplies, and services by contract, let in accordance with this section, the community college district shall submit the following information to the Chancellor of the California Community Colleges on or before January 1, 2016:

(A) The community college district's policies adopted pursuant to subdivision (a).

(B) An annual list of district procurements for contracts with a brief description of the contract, the winning bid, the cost, and if the contract was done under best value acquisition policies.

(C) For a contract awarded under the best value acquisition policies, the bid announcement announcing the bidder to which the award was made, including that bidder's scoring rating compared to other bidders, the winning contractor's price proposal, the overall combined rating on the request for proposal evaluation factors, a description of the products, commodities, or services sought, and a summary of the rationale for the contract award.

(D) For each contract awarded using the best value acquisition policies at least one bid award announcement for a comparably

priced contract using the traditional lowest responsible bidder process that specifies the bidder to which the contract was awarded, and the amount of the award, and the request for bid for that contract that includes a description of the products, commodities, or services sought for at least one comparably sized contract, to the best value contract being let, awarded pursuant to the traditional lowest responsible bidder process including contracts awarded by the district in the three years prior to the adoption of best value acquisition policies by the district.

(E) For contracts awarded using best value, a summary of any additional economic benefit other than the price of the contract obtained, including an explanation of whether these benefits were realized as expected.

(F) The total number of bid protests or protests concerning an aspect of the solicitation, bid, or award of the agreement since the district adopted policies pursuant to subdivision (a) and the number of those protests that occurred under best value.

(G) A description of any written bid protest or protests concerning an aspect of the solicitation, bid, or award of the agreement including the resolution of the protest for any contract submitted pursuant to this section.

(2) The Legislative Analyst shall request the chancellor to provide the information specified in paragraph (1) to the Legislative Analyst on or before July 1, 2016. On or before February 1, 2017, the Legislative Analyst shall report to the Legislature on the use of competitive means for obtaining best value procurement by community college districts. The Legislative Analyst shall use the information provided by the chancellor to report all of the following:

(A) A summary of the overall benefits of best value acquisition.

(B) A comparison of the overall cost of contracts let under best value acquisition pursuant to this section to similar contracts let under traditional low bid procurement practices.

(C) An assessment of any benefits or disadvantages of best value procurement practices as compared to bids awarded to the lowest responsible bidder.

(D) An assessment of whether the use of best value procurement has led to a difference in the number of disputes as compared to contracts awarded using the traditional lowest responsible bidder method.

(E) An assessment of the policies adopted by the community college districts pursuant to subdivision (a) as well as an assessment of the overall performance criteria used to evaluate the bids and the effectiveness of the methodology.

(F) Recommendations as to whether the best value at lowest cost acquisition procurement authority should be continued.

(j) This section shall remain in effect only until January 1, 2018, and as of that date is repealed.

Approved _____, 2012

Governor