

AMENDED IN ASSEMBLY MARCH 28, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1971

Introduced by Assembly Member Bocanegra

February 19, 2014

An act to amend Section 52051.5 of the Education Code, relating to ~~school accountability~~; *add and repeal Article 3.3 (commencing with Section 20119) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to best value procurement.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1971, as amended, Bocanegra. ~~School accountability: Academic Performance Index. Public contracts: school districts: competitive bidding: best value.~~

The Local Agency Public Construction Act requires the governing board of any school district to let any contract for a public project, as defined, involving an expenditure of \$15,000 or more, to the lowest responsible bidder that gives security as the board requires, or else reject all bids.

This bill would authorize the bid evaluation and selection for public projects that exceed \$1,000,000 to be determined by the best value for the school district. The bill would establish various requirements applicable to the use of the best value procurement method for the evaluation and selection of public projects by school districts under this authorization.

~~Existing law, the Public Schools Accountability Act of 1999, requires the Superintendent of Public Instruction, with approval of the State Board of Education, to develop an Academic Performance Index to measure the performance of schools and school districts, especially the~~

academic performance of pupils. Existing law, for purposes of the act, requires all references to schools to include charter schools.

~~This bill would make a nonsubstantive change to the provision requiring all references to schools to include charter schools.~~

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

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

1 SECTION 1. Article 3.3 (commencing with Section 20119) is
2 added to Chapter 1 of Part 3 of Division 2 of the Public Contract
3 Code, to read:

4
5 Article 3.3. School Districts — Best Value Procurement

6
7 20119. (a) It is the intent of the Legislature to enable school
8 districts to use cost-effective options for building and modernizing
9 school facilities. The Legislature has recognized the merits of the
10 best value procurement method process in the past by authorizing
11 its use for projects undertaken by the University of California.

12 (b) The Legislature also finds and declares that school districts
13 using the best value procurement method require a clear
14 understanding of the roles and responsibilities of each participant
15 in the best value process. As reflected in the University of
16 California report to the Legislature, the benefits of a best value
17 procurement method include a reduction in contract delays, change
18 orders, and claims producing a savings in both contract costs and
19 administration.

20 (c) It is the intent of the Legislature to provide an optional,
21 alternative procedure for bidding and building school construction
22 projects.

23 (d) In addition, it is the intent of the Legislature that the best
24 value procurement method is not intended to change in any manner
25 any guideline, criteria, procedure, or requirement of the governing
26 board of the school district to let any contract for a project to the
27 lowest responsible bidder or else reject all bids.

28 20119.1. As used in this article:

29 (a) “Best value” means a procurement process whereby the
30 selected bidder may be selected on the basis of objective criteria
31 for evaluating the qualifications of bidders with the resulting

1 *selection representing the best combination of price and*
2 *qualifications.*

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

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

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

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

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

26 (g) *“Project” has the same meaning as “public project” is*
27 *defined in subdivision (c) of Section 22002.*

28 (h) *“Qualifications” means financial condition, relevant*
29 *experience, demonstrated management competency, labor*
30 *compliance, the safety record of the bidder, and to the extent*
31 *relevant, the preceding qualifications as they pertain to all*
32 *subcontractors proposed to be used by the bidder for designated*
33 *portions of the work.*

34 (i) *“Relevant experience” means the experience, competency,*
35 *capability, and capacity to complete projects of similar size, scope,*
36 *or complexity.*

37 (j) *“Safety record” shall be deemed “acceptable” if its*
38 *experience modification rate for the most recent three-year period*
39 *is an average of 1.00 or less, and its average total recordable*
40 *injury or illness rate and average lost work rate for the most recent*

1 *three-year period do not exceed the applicable statistical standards*
 2 *for its business category, or if the bidder is a party to an alternative*
 3 *dispute resolution system as provided for in Section 3201.5 of the*
 4 *Labor Code. If the experience modification rate for the most recent*
 5 *three-year period is or was 1.00 or higher, a bidder may attach a*
 6 *letter of explanation that the school district may review and take*
 7 *into consideration when evaluating the bidder’s acceptable safety*
 8 *record.*

9 (k) (1) *“Skilled and trained workforce” means a workforce*
 10 *that meets both of the following criteria, as applicable:*

11 (A) *All the workers are either registered apprentices or skilled*
 12 *journeypersons.*

13 (B) (i) *As of January 1, 2015, at least 30 percent of the skilled*
 14 *journeypersons are graduates of an apprenticeship program for*
 15 *the applicable occupation that was either approved by the Chief*
 16 *of the Division of Apprenticeship Standards pursuant to Section*
 17 *3075 of the Labor Code or located outside California and approved*
 18 *for federal purposes pursuant to the apprenticeship regulations*
 19 *adopted by the federal Secretary of Labor.*

20 (ii) *As of January 1, 2016, at least 45 percent of the skilled*
 21 *journeypersons are graduates of an apprenticeship program for*
 22 *the applicable occupation that was either approved by the Chief*
 23 *of the Division of Apprenticeship Standards pursuant to Section*
 24 *3075 of the Labor Code or located outside California and approved*
 25 *for federal purposes pursuant to the apprenticeship regulations*
 26 *adopted by the federal Secretary of Labor.*

27 (iii) *As of January 1, 2017, at least 60 percent of the skilled*
 28 *journeypersons are graduates of an apprenticeship program for*
 29 *the applicable occupation that was either approved by the Chief*
 30 *of the Division of Apprenticeship Standards pursuant to Section*
 31 *3075 of the Labor Code or located outside California and approved*
 32 *for federal purposes pursuant to the apprenticeship regulations*
 33 *adopted by the federal Secretary of Labor.*

34 (2) *A school district and a contractor are not required to track*
 35 *the percentage of journeypersons that are graduates of an*
 36 *apprenticeship program if the governing board of the school*
 37 *district has entered into a project labor agreement that will bind*
 38 *all contractors and subcontractors performing work on the project*
 39 *and complies with Section 2500.*

1 20119.2. (a) *The governing board of any school district, for*
2 *projects over one million dollars (\$1,000,000), may use the best*
3 *value procurement method in accordance with this article.*

4 (b) *The governing board of any school district shall let any*
5 *contract for a project pursuant to this article to the selected bidder*
6 *that represents the best value or else reject all bids.*

7 (c) *The bidder may be selected on the basis of the best value to*
8 *the governing board of the school district. In order to implement*
9 *this method of selection, the governing board of the school district*
10 *shall adopt and publish procedures and required guidelines for*
11 *evaluating the qualifications of the bidders that ensure the best*
12 *value selections by the school district are conducted in a fair and*
13 *impartial manner. These procedures and guidelines shall conform*
14 *to this article and shall be mandatory for the school district when*
15 *using best value selection.*

16 (d) *If the governing board of the school district deems it to be*
17 *for the best interest of the school district, the governing board of*
18 *the school district may, on the refusal or failure of the successful*
19 *bidder for a project to execute a tendered contract, award it to the*
20 *second bidder that represents the best value. If the second bidder*
21 *fails or refuses to execute the contract, the governing board of the*
22 *school district may likewise award it to the third bidder.*

23 20119.3. *The governing board of the school district shall*
24 *proceed in accordance with the following when awarding best*
25 *value contracts under this article:*

26 (a) *The governing board of the school district shall prepare a*
27 *solicitation for bids and give notice pursuant to Section 20112.*

28 (b) *The governing board of the school district shall establish a*
29 *procedure to prequalify bidders pursuant to Sections 20101 and*
30 *20111.6. Information submitted by the bidder as part of the*
31 *evaluation process shall not be open to public inspection to the*
32 *extent that information is exempt from disclosure under the*
33 *California Public Records Act (Chapter 3.5 (commencing with*
34 *Section 6250) of Division 7 of Title 1 of the Government Code).*

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

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

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

39 (A) *Criteria that the governing board of the school district will*
40 *consider in evaluating the qualifications of the bidders.*

1 (B) *The methodology and rating or weighting system that will*
 2 *be used by the governing board of the school district in evaluating*
 3 *bids and specifically whether proposals will be rated according*
 4 *to numeric or qualitative values.*

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

8 (d) *Final evaluation of the best value contractor shall be done*
 9 *in a manner that prevents cost or price information from being*
 10 *revealed to the committee evaluating the qualifications of the*
 11 *bidders prior to completion and announcement of that committee's*
 12 *decision.*

13 20119.4. *Selection of the best value contractor shall be made*
 14 *as follows:*

15 (a) (1) *The governing board of the school district shall evaluate*
 16 *the qualifications of the bidders based solely upon the criteria set*
 17 *forth in the solicitation documents, and shall assign a qualification*
 18 *score to each bid.*

19 (2) *Factors in determining a qualification score shall include,*
 20 *but are not limited to, price, relevant experience, skilled and*
 21 *trained workforce, and acceptable safety record and shall be*
 22 *weighted in accordance with the following:*

23 (A) *At least 50 percent of the total weight or consideration shall*
 24 *be given to the following factors: relevant expertise, skilled and*
 25 *trained workforce, and acceptable safety record. A factor listed*
 26 *in this subparagraph shall not make up less than 15 percent of the*
 27 *total weight or consideration.*

28 (B) *No more than 50 percent of the total weight or consideration*
 29 *shall be given to price. A bidder that qualifies as a certified small*
 30 *business shall receive a 5-percent bid preference.*

31 (b) *The award of the contract shall be made to the bidder whose*
 32 *bid is determined, by the school district in writing, to be the best*
 33 *value to the governing board of the school district. To determine*
 34 *the best value contractor, the governing board of the school district*
 35 *shall divide each bidder's price by its qualifications score. The*
 36 *lowest resulting cost per quality point will represent the best value*
 37 *bid.*

38 (c) *The governing board of the school district shall issue a*
 39 *written decision of its contract award.*

1 (d) Upon issuance of a contract award, the governing board of
2 the school district shall publicly announce its award identifying
3 the best value contractor to which the award is made, the project,
4 the project price, and the selected best value contractor's score
5 based on the qualifications criteria for evaluating the bidders
6 listed in the request for bids. The notice of award shall be made
7 public and include the score of the selected best value contractor
8 in relation to all other responsive bidders and their respective
9 prices. The names of the remaining responsive bidders may be
10 concealed upon the request of the bidders, in which case the
11 governing board of the school district shall determine an
12 alternative method for publicly announcing its award of the
13 contract. The contract file shall include documentation sufficient
14 to support the decision to award.

15 20119.5. This article shall remain in effect only until January
16 1, 2022, and as of that date is repealed, unless a later enacted
17 statute, that is enacted before January 1, 2022, deletes or extends
18 that date.

19 ~~SECTION 1. Section 52051.5 of the Education Code is~~
20 ~~amended to read:~~

21 ~~52051.5. For purposes of this chapter, all references to schools~~
22 ~~shall also include charter schools.~~