

**ASSEMBLY BILL**

**No. 1185**

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**Introduced by Assembly Member Ridley-Thomas**

February 27, 2015

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An act to 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 1185, as introduced, Ridley-Thomas. Los Angeles Unified School District: best value procurement: pilot program.

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 establish a pilot program to authorize the Los Angeles Unified School District to use, before December 31, 2020, a best value procurement method for bid evaluation and selection for public projects that exceed \$1,000,000. The bill would establish various requirements applicable to the use of the best value procurement method under this authorization. The bill would require the school district to submit an interim and final report to the Legislative Analyst, and would require the Legislative Analyst to submit an interim and final report to the appropriate policy and fiscal committees of the Legislature on the use of the procurement method pursuant to the bill, in accordance with a specified schedule. These provisions would be repealed on January 1, 2021.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Los Angeles Unified School District.

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. Los Angeles Unified School District — Best Value  
6 Procurement  
7

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

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

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

24 20119.1. As used in this article:

25 (a) “Apprenticeable Occupation” means an occupation for which  
26 the Chief of the Division of Apprenticeship Standards had approved  
27 an apprenticeship program pursuant to Section 3075 of the Labor  
28 Code prior to January 1, 2015.

29 (b) “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  
32 selection representing the best combination of price and  
33 qualifications.

- 1 (c) “Best value contract” means a competitively bid contract  
2 entered into pursuant to this article.
- 3 (d) “Best value contractor” means a properly licensed person,  
4 firm, or corporation that submits a bid for and is awarded a best  
5 value contract.
- 6 (e) “Demonstrated management competency” means the  
7 experience, competency, capability, and capacity of the proposed  
8 management staffing to complete projects of similar size, scope,  
9 or complexity.
- 10 (f) “Financial condition” means the financial resources needed  
11 to perform the contract. The criteria used to evaluate a bidder’s  
12 financial condition shall include, at a minimum, capacity to obtain  
13 all required payment bonds and required insurance.
- 14 (g) “Governing board” or “governing board of the school  
15 district” means the governing board of the Los Angeles Unified  
16 School District.
- 17 (h) “Labor compliance” means the ability to comply with, and  
18 past performance with, contract and statutory requirements for the  
19 payment of wages and qualifications of the workforce. The criteria  
20 used to evaluate a bidder’s labor compliance shall include, at a  
21 minimum, the bidder’s ability to comply with the apprenticeship  
22 requirements of the California Apprenticeship Council and the  
23 Department of Industrial Relations, its past conformance with such  
24 requirements, and its past conformance with requirements to pay  
25 prevailing wages on public works projects.
- 26 (i) “Project” has the same meaning as “public project” as defined  
27 in subdivision (c) of Section 22002.
- 28 (j) “Qualifications” means financial condition, relevant  
29 experience, demonstrated management competency, labor  
30 compliance, skilled and trained workforce, the safety record of the  
31 bidder, and, if required by the bidding document, some or all of  
32 the preceding qualifications as they pertain to subcontractors  
33 proposed to be used by the bidder for designated portions of the  
34 work.
- 35 (k) “Relevant experience” means the experience, competency,  
36 capability, and capacity to complete projects of similar size, scope,  
37 or complexity.
- 38 (l) “Safety record” shall be deemed “acceptable” if its experience  
39 modification rate for the most recent three-year period is an average  
40 of 1.00 or less, and its average total recordable injury or illness

1 rate and average lost work rate for the most recent three-year period  
2 do not exceed the applicable statistical standards for its business  
3 category, or if the bidder is a party to an alternative dispute  
4 resolution system as provided for in Section 3201.5 of the Labor  
5 Code.

6 (m) “School district” means the Los Angeles Unified School  
7 District.

8 (n) “Skilled and trained workforce” means a workforce that  
9 meets all of the following conditions:

10 (1) All the workers are either skilled journeypersons or  
11 apprentices registered in an apprenticeship program approved by  
12 the Chief of the Division of Apprenticeship Standards.

13 (2) (A) As of January 1, 2016, at least 20 percent of the skilled  
14 journeypersons employed to perform work on the contract or  
15 project by the entity and each of its subcontractors at every tier  
16 are graduates of an apprenticeship program for the applicable  
17 occupation that was either approved by the Chief of the Division  
18 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
19 Code or located outside California and approved for federal  
20 purposes pursuant to the apprenticeship regulations adopted by  
21 the federal Secretary of Labor.

22 (B) As of January 1, 2017, at least 30 percent of the skilled  
23 journeypersons employed to perform work on the contract or  
24 project by the entity and each of its subcontractors at every tier  
25 are graduates of an apprenticeship program for the applicable  
26 occupation that was either approved by the Chief of the Division  
27 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
28 Code or located outside California and approved for federal  
29 purposes pursuant to the apprenticeship regulations adopted by  
30 the federal Secretary of Labor.

31 (C) As of January 1, 2018, at least 40 percent of the skilled  
32 journeypersons employed to perform work on the contract or  
33 project by the entity and each of its subcontractors at every tier  
34 are graduates of an apprenticeship program for the applicable  
35 occupation that was either approved by the Chief of the Division  
36 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
37 Code or located outside California and approved for federal  
38 purposes pursuant to the apprenticeship regulations adopted by  
39 the federal Secretary of Labor.

1 (D) As of January 1, 2019, at least 50 percent of the skilled  
2 journeypersons employed to perform work on the contract or  
3 project by the entity and each of its subcontractors at every tier  
4 are graduates of an apprenticeship program for the applicable  
5 occupation that was either approved by the Chief of the Division  
6 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
7 Code or located outside California and approved for federal  
8 purposes pursuant to the apprenticeship regulations adopted by  
9 the federal Secretary of Labor.

10 (E) As of January 1, 2020, at least 60 percent of the skilled  
11 journeypersons employed to perform work on the contract or  
12 project by the entity and each of its subcontractors at every tier  
13 are graduates of an apprenticeship program for the applicable  
14 occupation that was either approved by the Chief of the Division  
15 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
16 Code or located outside California and approved for federal  
17 purposes pursuant to the apprenticeship regulations adopted by  
18 the federal Secretary of Labor.

19 (3) For an apprenticeable occupation in which no apprenticeship  
20 program had been approved by the chief prior to January 1, 1995,  
21 up to one-half of the graduation percentage requirements of  
22 paragraph (2) may be satisfied by skilled journeypersons who  
23 commenced working in the apprenticeable occupation prior to the  
24 chief's approval of an apprenticeship program for that occupation  
25 in the county in which the project is located.

26 (o) "Skilled journeyperson" means a worker who either:

27 (1) Graduated from an apprenticeship program for the applicable  
28 occupation that was approved by the chief or located outside  
29 California and approved for federal purposes pursuant to the  
30 apprenticeship regulations adopted by the federal Secretary of  
31 Labor.

32 (2) Has at least as many hours of on-the-job experience in the  
33 applicable occupation as would be required to graduate from an  
34 apprenticeship program for the applicable occupation that is  
35 approved by the chief.

36 20119.2. (a) This article provides for a pilot program for the  
37 Los Angeles Unified School District to use best value procurement  
38 for projects over one million dollars (\$1,000,000).

1 (b) The governing board, for projects over one million dollars  
2 (\$1,000,000), before December 31, 2020, may use the best value  
3 procurement method in accordance with this article.

4 (c) The governing board of the 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 (d) 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 (e) 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, on the refusal or failure of the selected bidder  
19 for a project to execute a tendered contract, may award it to the  
20 second lowest scored bidder that represents the best value. If the  
21 second bidder fails or refuses to execute the contract, the governing  
22 board of the school district may likewise award it to the third lowest  
23 scored bidder.

24 (f) (1) If the school district elects to award a project pursuant  
25 to this section, retention proceeds withheld by the district from the  
26 selected best value contractor shall not exceed 5 percent if a  
27 performance and payment bond, issued by an admitted surety  
28 insurer, is required in the solicitation of bids.

29 (2) In a contract between the selected best value contractor and  
30 a subcontractor, and in a contract between a subcontractor and any  
31 subcontractor thereunder, the percentage of the retention proceeds  
32 withheld shall not exceed the percentage specified in the contract  
33 between the district and the selected best value contractor. If the  
34 selected best value contractor provides written notice to a  
35 subcontractor that, prior to or at the time the bid is requested, a  
36 bond may be required and the subcontractor subsequently is unable  
37 or refuses to furnish a bond to the selected best value contractor,  
38 then the selected best value contractor may withhold retention  
39 proceeds in excess of the percentage specified in the contract  
40 between the district and the selected best value contractor from

1 any payment made by the selected best value contractor to the  
2 subcontractor.

3 (g) All subcontractors bidding on contracts pursuant to this  
4 chapter shall be afforded the protection contained in Chapter 4  
5 (commencing with Section 4100) of Part 1.

6 20119.3. The governing board of the school district shall  
7 proceed in accordance with the following when awarding best  
8 value contracts under this article:

9 (a) The school district shall prepare a solicitation for bids and  
10 give notice pursuant to Section 20112.

11 (b) The school district shall establish a procedure to prequalify  
12 bidders as required by this code. Information submitted by the  
13 bidder as part of the evaluation process shall not be open to public  
14 inspection to the extent that information is exempt from disclosure  
15 under the California Public Records Act (Chapter 3.5 (commencing  
16 with Section 6250) of Division 7 of Title 1 of the Government  
17 Code).

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

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

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

22 (A) Criteria that the school district will consider in evaluating  
23 the qualifications of the bidders.

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

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

29 (d) Final evaluation of the bidders shall be done in a manner  
30 that prevents the identity of the bidders and the cost or price  
31 information from being revealed in evaluating the qualifications  
32 of the bidders prior to completion of qualification scoring.

33 20119.4. Selection of the best value contractor shall be made  
34 as follows:

35 (a) (1) The school district shall evaluate the qualifications of  
36 the bidders based solely upon the criteria set forth in the solicitation  
37 documents, and shall assign a qualification score to each bid.

38 (2) Factors in determining a qualification score shall include,  
39 but are not limited to, relevant experience, skilled and trained

1 workforce, and acceptable safety record and shall be weighted in  
2 accordance with the following:

3 (A) At least 50 percent of the total weight or consideration shall  
4 be given to the following factors: relevant expertise, skilled and  
5 trained workforce, and acceptable safety record. A factor listed in  
6 this subparagraph shall not make up less than 15 percent of the  
7 total weight or consideration. Other factors may be included, in  
8 addition to relevant experience, skilled and trained workforce, and  
9 acceptable safety record, in determining a qualification score.

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

13 (b) To determine the best value contractor, the school district  
14 shall divide each bidder’s price by its qualifications score. A  
15 preference of up to 5 percent shall be applied to the price of a bid  
16 submitted by a small business, as defined by the school district,  
17 before dividing the bidder’s price by its qualification score. The  
18 lowest resulting cost per quality point will represent the best value  
19 bid. The award of the contract shall be made to the bidder whose  
20 bid is determined, by the school district in writing, to be the best  
21 value to the school district.

22 (c) The school district shall issue a written decision of its  
23 contract award or else reject all bids.

24 (d) Upon issuance of a contract award, the school district shall  
25 publicly announce its award identifying the project, the project  
26 price, the best value contractor to which the award is made, as well  
27 as the prices, qualification scores, and resulting costs per  
28 qualification point for all responsive bidders. The contract file  
29 shall include documentation sufficient to support the decision to  
30 award.

31 20119.5. (a) (1) A school district that uses the best value  
32 procurement method pursuant to this article shall submit to the  
33 Legislative Analyst the following reports completed by an  
34 independent third party:

35 (A) An interim report on or before July 1, 2018.

36 (B) A final report on or before January 1, 2020.

37 (2) A report shall include, but is not limited to, the following  
38 information:

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

- 1 (B) The contract award amounts.
- 2 (C) The best value contractors awarded the projects.
- 3 (D) A description of any written protests concerning any aspect
- 4 of the solicitation, bid, or award of the best value contracts,
- 5 including the resolution of the protests.
- 6 (E) A description of the prequalification process.
- 7 (F) The criteria used to evaluate the bids, including the
- 8 weighting of the criteria and an assessment of the effectiveness of
- 9 the methodology.
- 10 (G) If a project awarded under this article has been completed,
- 11 an assessment of the project performance, to include a summary
- 12 of any delays or cost increases.
- 13 (b) (1) The Legislative Analyst shall submit an interim report
- 14 to the appropriate policy and fiscal committees of the Legislature
- 15 on the use of the best value procurement method by school districts
- 16 on or before January 1, 2019, and a final report on or before July
- 17 1, 2020. The report may include the information provided from
- 18 the school district reports pursuant to subdivision (a) and any
- 19 pertinent information that the Legislative Analyst deems instructive
- 20 in evaluating whether the best value procurement method should
- 21 be continued, expanded, or prohibited.
- 22 (2) The requirement for submitting a report imposed pursuant
- 23 to this subdivision is inoperative on January 1, 2021, pursuant to
- 24 Section 10231.5 of the Government Code.
- 25 20119.6. Except as otherwise provided in this article, the best
- 26 value procurement method is not intended to change any guideline,
- 27 criterion, procedure, or requirement of the governing board of the
- 28 school district to let a contract for a project to the lowest
- 29 responsible bidder or else reject all bids.
- 30 20119.7. This article shall remain in effect only until January
- 31 1, 2021, and as of that date is repealed, unless a later enacted
- 32 statute, that is enacted before January 1, 2021, deletes or extends
- 33 that date.
- 34 SEC. 2. The Legislature finds and declares that a special law
- 35 is necessary and that a general law cannot be made applicable
- 36 within the meaning of Section 16 of Article IV of the California
- 37 Constitution because of the need to establish a pilot project for the
- 38 Los Angeles Unified School District to determine the potential

- 1 benefits and consequences of using best value procurement to
- 2 facilitate infrastructure improvements and ease fiscal impacts.

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