

AMENDED IN ASSEMBLY MAY 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1185

Introduced by Assembly Member Ridley-Thomas

February 27, 2015

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 amended, 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 These provisions would be repealed on January 1, 2021.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) *“Best value score” means the resulting score when the*
7 *school district divides the bidder’s price by the bidder’s*
8 *qualification score.*

9 ~~(e)~~

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

14 ~~(f)~~

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

19 ~~(g)~~

20 (h) “Governing board” or “governing board of the school
21 district” means the governing board of the Los Angeles Unified
22 School District.

23 ~~(h)~~

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

33 ~~(i)~~

34 (j) “Project” has the same meaning as “public project” as defined
35 in subdivision (c) of Section 22002.

36 ~~(j)~~

37 (k) “Qualifications” means financial condition, relevant
38 experience, demonstrated management competency, labor
39 compliance, ~~skilled and trained workforce~~, the safety record of the
40 bidder, and, ~~if required by the bidding document, some or all of~~

1 *to the extent relevant*, the preceding qualifications as they pertain
2 to *all* subcontractors proposed to be used by the bidder for
3 designated portions of the work.

4 ~~(k)~~

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

8 ~~(t)~~

9 (m) “Safety record” shall be deemed “acceptable” *as determined*
10 *by the school district. In its determination, the school district shall*
11 *consider, but is not required to find, a contractor’s safety record*
12 *as acceptable* if its experience modification rate for the most recent
13 three-year period is an average of 1.00 or less, and its average total
14 recordable injury or illness rate and average lost work rate for the
15 most recent three-year period do not exceed the applicable
16 statistical standards for its business category, or if the bidder is a
17 party to an alternative dispute resolution system as provided for
18 in Section 3201.5 of the Labor Code.

19 ~~(m)~~

20 (n) “School district” means the Los Angeles Unified School
21 District.

22 ~~(n)~~

23 (o) “Skilled and trained workforce” means a workforce that
24 meets all of the following conditions:

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

28 (2) (A) As of January 1, 2016, at least ~~20~~ 30 percent of the
29 skilled journeypersons employed to perform work on the contract
30 or project by the entity and each of its subcontractors at every tier
31 are graduates of an apprenticeship program for the applicable
32 occupation that was either approved by the Chief of the Division
33 of Apprenticeship Standards pursuant to Section 3075 of the Labor
34 Code or located outside California and approved for federal
35 purposes pursuant to the apprenticeship regulations adopted by
36 the federal Secretary of Labor.

37 (B) As of January 1, 2017, at least ~~30~~ 40 percent of the skilled
38 journeypersons employed to perform work on the contract or
39 project by the entity and each of its subcontractors at every tier
40 are graduates of an apprenticeship program for the applicable

1 occupation that was either approved by the Chief of the Division
2 of Apprenticeship Standards pursuant to Section 3075 of the Labor
3 Code or located outside California and approved for federal
4 purposes pursuant to the apprenticeship regulations adopted by
5 the federal Secretary of Labor.

6 (C) As of January 1, 2018, at least-~~40~~ 50 percent of the skilled
7 journeypersons employed to perform work on the contract or
8 project by the entity and each of its subcontractors at every tier
9 are graduates of an apprenticeship program for the applicable
10 occupation that was either approved by the Chief of the Division
11 of Apprenticeship Standards pursuant to Section 3075 of the Labor
12 Code or located outside California and approved for federal
13 purposes pursuant to the apprenticeship regulations adopted by
14 the federal Secretary of Labor.

15 (D) As of January 1, 2019, at least-~~50~~ 60 percent of the skilled
16 journeypersons employed to perform work on the contract or
17 project by the entity and each of its subcontractors at every tier
18 are graduates of an apprenticeship program for the applicable
19 occupation that was either approved by the Chief of the Division
20 of Apprenticeship Standards pursuant to Section 3075 of the Labor
21 Code or located outside California and approved for federal
22 purposes pursuant to the apprenticeship regulations adopted by
23 the federal Secretary of Labor.

24 (E) As of January 1, 2020, at least-~~60~~ 70 percent of the skilled
25 journeypersons employed to perform work on the contract or
26 project by the entity and each of its subcontractors at every tier
27 are graduates of an apprenticeship program for the applicable
28 occupation that was either approved by the Chief of the Division
29 of Apprenticeship Standards pursuant to Section 3075 of the Labor
30 Code or located outside California and approved for federal
31 purposes pursuant to the apprenticeship regulations adopted by
32 the federal Secretary of Labor.

33 (3) For an apprenticeable occupation in which no apprenticeship
34 program had been approved by the chief prior to January 1, 1995,
35 up to one-half of the graduation percentage requirements of
36 paragraph (2) may be satisfied by skilled journeypersons who
37 commenced working in the apprenticeable occupation prior to the
38 chief's approval of an apprenticeship program for that occupation
39 in the county in which the project is located.

40 (e)

1 (p) “Skilled journeyperson” means a worker who either:
 2 (1) Graduated from an apprenticeship program for the applicable
 3 occupation that was approved by the chief or located outside
 4 California and approved for federal purposes pursuant to the
 5 apprenticeship regulations adopted by the federal Secretary of
 6 Labor.

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

11 20119.2. (a) This article provides for a pilot program for the
 12 Los Angeles Unified School District to use best value procurement
 13 for projects over one million dollars (\$1,000,000).

14 (b) The governing board, for projects over one million dollars
 15 (\$1,000,000), before December 31, 2020, may use the best value
 16 procurement method in accordance with this article.

17 (c) The governing board of the school district shall let any
 18 contract for a project pursuant to this article to the selected bidder
 19 that represents the best value or else reject all bids.

20 (d) The bidder may be selected on the basis of the best value to
 21 the governing board of the school district. In order to implement
 22 this method of selection, the governing board of the school district
 23 shall adopt and publish procedures and required guidelines for
 24 evaluating the qualifications of the bidders that ensure the best
 25 value selections by the school district are conducted in a fair and
 26 impartial manner. These procedures and guidelines shall conform
 27 to this article and shall be mandatory for the school district when
 28 using best value selection.

29 (e) If the governing board of the school district deems it to be
 30 for the best interest of the school district, the governing board of
 31 the school district, on the refusal or failure of the selected bidder
 32 for a project to execute a tendered contract, may award it to the
 33 ~~second lowest scored bidder that represents the best value.~~ *bidder*
 34 *with the second lowest best value score.* If the second bidder fails
 35 or refuses to execute the contract, the governing board of the school
 36 district may likewise award it to the *bidder with the third lowest*
 37 ~~scored bidder.~~ *best value score.*

38 (f) (1) If the school district elects to award a project pursuant
 39 to this section, retention proceeds withheld by the district from the
 40 selected best value contractor shall not exceed 5 percent if a

1 performance and payment bond, issued by an admitted surety
2 insurer, is required in the solicitation of bids.

3 (2) In a contract between the selected best value contractor and
4 a subcontractor, and in a contract between a subcontractor and any
5 subcontractor thereunder, the percentage of the retention proceeds
6 withheld shall not exceed the percentage specified in the contract
7 between the district and the selected best value contractor. If the
8 selected best value contractor provides written notice to a
9 subcontractor that, prior to or at the time the bid is requested, a
10 bond may be required and the subcontractor subsequently is unable
11 or refuses to furnish a bond to the selected best value contractor,
12 then the selected best value contractor may withhold retention
13 proceeds in excess of the percentage specified in the contract
14 between the district and the selected best value contractor from
15 any payment made by the selected best value contractor to the
16 subcontractor.

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

20 20119.3. The governing board of the school district shall
21 proceed in accordance with the following when awarding best
22 value contracts under this article:

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

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

32 (2) *A best value entity shall not be prequalified or shortlisted
33 unless the entity provides an enforceable commitment to the
34 governing board that the entity and its subcontractors at every
35 tier will use a skilled and trained workforce to perform all work
36 on the project or contract that falls within an apprenticeable
37 occupation in the building and construction trades.*

38 (3) *An entity's commitment that a skilled and trained workforce
39 will be used to perform the project or contract may be established
40 by any of the following:*

1 (A) *The entity’s agreement with the school district that the entity*
 2 *and its subcontractors at every tier will comply with the*
 3 *requirements of this subdivision and that the entity will provide*
 4 *the director with evidence, on a monthly basis while the project*
 5 *or contract is being performed, that the entity and its*
 6 *subcontractors are complying with the requirements of this*
 7 *subdivision.*

8 (B) *If the governing board has entered into a project labor*
 9 *agreement that will bind all contractors and subcontractors*
 10 *performing work on the project or contract and that includes the*
 11 *requirements of this subdivision, the entity’s agreement that it will*
 12 *become a party to that project labor agreement.*

13 (C) *Evidence that the entity has entered into a project labor*
 14 *agreement that includes the requirements of this subdivision and*
 15 *that will bind the entity and all its subcontractors at every tier*
 16 *performing the project or contract.*

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

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

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

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

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

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

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

32 20119.4. Selection of the best value contractor shall be made
 33 as follows:

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

37 ~~(2) Factors in determining a qualification score shall include,~~
 38 ~~but are not limited to, relevant experience, skilled and trained~~
 39 ~~workforce, and acceptable safety record and shall be weighted in~~
 40 ~~accordance with the following:~~

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

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

11 ~~(2) Qualification scores shall be determined by using only the~~
12 ~~criteria and selection procedures specifically identified in the~~
13 ~~request for proposals. The following minimum factors, however,~~
14 ~~shall be weighted as deemed appropriate by the school district:~~

15 ~~(A) Relevant experience.~~

16 ~~(B) Safety record.~~

17 ~~(C) Other factors identified in the request for proposal.~~

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

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

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

36 20119.5. (a) (1) A school district that uses the best value
37 procurement method pursuant to this article shall submit to the
38 Legislative Analyst the following reports completed by an
39 independent third party:

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

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

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

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

6 (B) The contract award amounts.

7 (C) The best value contractors awarded the projects.

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

11 (E) A description of the prequalification process.

12 (F) The criteria used to evaluate the bids, including the
13 weighting of the criteria and an assessment of the effectiveness of
14 the methodology.

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

18 (b) (1) The Legislative Analyst shall submit an interim report
19 to the appropriate policy and fiscal committees of the Legislature
20 on the use of the best value procurement method by school districts
21 on or before January 1, 2019, and a final report on or before July
22 1, 2020. The report may include the information provided from
23 the school district reports pursuant to subdivision (a) and any
24 pertinent information that the Legislative Analyst deems instructive
25 in evaluating whether the best value procurement method should
26 be continued, expanded, or prohibited.

27 (2) The requirement for submitting a report imposed pursuant
28 to this subdivision is inoperative on January 1, 2021, pursuant to
29 Section 10231.5 of the Government Code.

30 20119.6. Except as otherwise provided in this article, the best
31 value procurement method is not intended to change any guideline,
32 criterion, procedure, or requirement of the governing board of the
33 school district to let a contract for a project to the lowest
34 responsible bidder or else reject all bids.

35 20119.7. This article shall remain in effect only until January
36 1, 2021, and as of that date is repealed, unless a later enacted
37 statute, that is enacted before January 1, 2021, deletes or extends
38 that date.

39 SEC. 2. The Legislature finds and declares that a special law
40 is necessary and that a general law cannot be made applicable

1 within the meaning of Section 16 of Article IV of the California
2 Constitution because of the need to establish a pilot project for the
3 Los Angeles Unified School District to determine the potential
4 benefits and consequences of using best value procurement to
5 facilitate infrastructure improvements and ease fiscal impacts.

O