

AMENDED IN ASSEMBLY MAY 20, 2015

AMENDED IN ASSEMBLY MAY 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**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 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 These provisions would be repealed on January 1, 2021.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~~ *Apprenticeship*  
27 Standards had approved an apprenticeship program pursuant to  
28 Section 3075 of the Labor 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

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

3 (c) “Best value contract” means a competitively bid contract  
4 entered into pursuant to this article.

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

8 (e) “Best value score” means the resulting score when the school  
9 district divides the bidder’s price by the bidder’s qualification  
10 score.

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

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

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

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

33 (k) “Qualifications” means financial condition, relevant  
34 experience, demonstrated management competency, labor  
35 compliance, the safety record of the bidder, and, to the extent  
36 relevant, the preceding qualifications as they pertain to all  
37 subcontractors proposed to be used by the bidder for designated  
38 portions of the work.

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

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

14 (n) “School district” means the Los Angeles Unified School  
15 District.

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

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

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

30 (B) As of January 1, 2017, at least 40 percent of the skilled  
31 journeypersons employed to perform work on the contract or  
32 project by the entity and each of its subcontractors at every tier  
33 are graduates of an apprenticeship program for the applicable  
34 occupation that was either approved by the Chief of the Division  
35 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
36 Code or located outside California and approved for federal  
37 purposes pursuant to the apprenticeship regulations adopted by  
38 the federal Secretary of Labor.

39 (C) As of January 1, 2018, at least 50 percent of the skilled  
40 journeypersons employed to perform work on the contract or

1 project by the entity and each of its subcontractors at every tier  
2 are graduates of an apprenticeship program for the applicable  
3 occupation that was either approved by the Chief of the Division  
4 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
5 Code or located outside California and approved for federal  
6 purposes pursuant to the apprenticeship regulations adopted by  
7 the federal Secretary of Labor.

8 (D) As of January 1, 2019, at least 60 percent of the skilled  
9 journeypersons employed to perform work on the contract or  
10 project by the entity and each of its subcontractors at every tier  
11 are graduates of an apprenticeship program for the applicable  
12 occupation that was either approved by the Chief of the Division  
13 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
14 Code or located outside California and approved for federal  
15 purposes pursuant to the apprenticeship regulations adopted by  
16 the federal Secretary of Labor.

17 (E) As of January 1, 2020, at least 70 percent of the skilled  
18 journeypersons employed to perform work on the contract or  
19 project by the entity and each of its subcontractors at every tier  
20 are graduates of an apprenticeship program for the applicable  
21 occupation that was either approved by the Chief of the Division  
22 of Apprenticeship Standards pursuant to Section 3075 of the Labor  
23 Code or located outside California and approved for federal  
24 purposes pursuant to the apprenticeship regulations adopted by  
25 the federal Secretary of Labor.

26 (3) For an apprenticeable occupation in which no apprenticeship  
27 program had been approved by the chief prior to January 1, 1995,  
28 up to one-half of the graduation percentage requirements of  
29 paragraph (2) may be satisfied by skilled journeypersons who  
30 commenced working in the apprenticeable occupation prior to the  
31 chief's approval of an apprenticeship program for that occupation  
32 in the county in which the project is located.

33 (p) "Skilled journeyperson" means a worker who either:

34 (1) Graduated from an apprenticeship program for the applicable  
35 occupation that was approved by the chief or located outside  
36 California and approved for federal purposes pursuant to the  
37 apprenticeship regulations adopted by the federal Secretary of  
38 Labor.

39 (2) Has at least as many hours of on-the-job experience in the  
40 applicable occupation as would be required to graduate from an

1 apprenticeship program for the applicable occupation that is  
2 approved by the chief.

3 20119.2. (a) This article provides for a pilot program for the  
4 Los Angeles Unified School District to use best value procurement  
5 for projects over one million dollars (\$1,000,000).

6 (b) The governing board, for projects over one million dollars  
7 (\$1,000,000), before December 31, 2020, may use the best value  
8 procurement method in accordance with this article.

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

12 ~~(d)~~

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

22 ~~(e)~~

23 (d) If the governing board of the school district deems it to be  
24 for the best interest of the school district, the governing board of  
25 the school district, on the refusal or failure of the selected bidder  
26 for a project to execute a tendered contract, may award it to the  
27 bidder with the second lowest best value score. If the second bidder  
28 fails or refuses to execute the contract, the governing board of the  
29 school district may likewise award it to the bidder with the third  
30 lowest best value score.

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

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

39 (2) In a contract between the selected best value contractor and  
40 a subcontractor, and in a contract between a subcontractor and any

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

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

16 20119.3. The governing board of the school district shall  
17 proceed in accordance with the following when awarding best  
18 value contracts under this article:

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

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

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

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

37 (A) The entity's agreement with the school district that the entity  
38 and its subcontractors at every tier will comply with the  
39 requirements of this subdivision and that the entity will provide  
40 the ~~director~~ *governing board of the school district* with evidence,

1 on a monthly basis while the project or contract is being performed,  
2 that the entity and its subcontractors are complying with the  
3 requirements of this subdivision.

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

9 (C) Evidence that the entity has entered into a project labor  
10 agreement that includes the requirements of this subdivision and  
11 that will bind the entity and all its subcontractors at every tier  
12 performing the project or contract.

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

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

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

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

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

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

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

28 20119.4. Selection of the best value contractor shall be made  
29 as follows:

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

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

37 (A) Relevant experience.

38 (B) Safety record.

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



1 (b) To determine the best value contractor, the school district  
2 shall divide each bidder's price by its qualifications score. A  
3 preference of up to 5 percent shall be applied to the price of a bid  
4 submitted by a small business, as defined by the school district,  
5 before dividing the bidder's price by its qualification score. The  
6 lowest resulting cost per quality point will represent the best value  
7 bid. The award of the contract shall be made to the bidder whose  
8 bid is determined, by the school district in writing, to be the best  
9 value to the school district.

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

12 (d) Upon issuance of a contract award, the school district shall  
13 publicly announce its award identifying the project, the project  
14 price, the best value contractor to which the award is made, as well  
15 as the prices, qualification scores, and resulting costs per  
16 qualification point for all responsive bidders. The contract file  
17 shall include documentation sufficient to support the decision to  
18 award.

19 20119.5. (a) (1) A school district that uses the best value  
20 procurement method pursuant to this article shall submit to the  
21 Legislative Analyst the following reports completed by an  
22 independent third party:

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

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

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

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

29 (B) The contract award amounts.

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

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

34 (E) A description of the prequalification process.

35 (F) The criteria used to evaluate the bids, including the  
36 weighting of the criteria and an assessment of the effectiveness of  
37 the methodology.

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

1 (b) (1) The Legislative Analyst shall submit an interim report  
2 to the appropriate policy and fiscal committees of the Legislature  
3 on the use of the best value procurement method by school districts  
4 on or before January 1, 2019, and a final report on or before July  
5 1, 2020. The report may include the information provided from  
6 the school district reports pursuant to subdivision (a) and any  
7 pertinent information that the Legislative Analyst deems instructive  
8 in evaluating whether the best value procurement method should  
9 be continued, expanded, or prohibited.

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

13 20119.6. Except as otherwise provided in this article, the best  
14 value procurement method is not intended to change any guideline,  
15 criterion, procedure, or requirement of the governing board of the  
16 school district to let a contract for a project to the lowest  
17 responsible bidder or else reject all bids.

18 20119.7. This article shall remain in effect only until January  
19 1, 2021, and as of that date is repealed, unless a later enacted  
20 statute, that is enacted before January 1, 2021, deletes or extends  
21 that date.

22 SEC. 2. The Legislature finds and declares that a special law  
23 is necessary and that a general law cannot be made applicable  
24 within the meaning of Section 16 of Article IV of the California  
25 Constitution because of the need to establish a pilot project for the  
26 Los Angeles Unified School District to determine the potential  
27 benefits and consequences of using best value procurement to  
28 facilitate infrastructure improvements and ease fiscal impacts.