

Date of Hearing: March 12, 2025

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 361 (Schultz) – As Amended March 3, 2025

SUBJECT: Best value procurement: school districts

SUMMARY: Authorizes a pilot for all school districts, excluding the Los Angeles Unified School District (LAUSD), to use the best value procurement method until December 31, 2030. Authorizes the permanent authorization of use of the best value procurement method to the LAUSD. Specifically, **this bill:**

All school districts, excluding the LAUSD:

- 1) Authorizes the governing board of a school district, for projects over \$1 million before December 31, 2030, to use the best value procurement method.
- 2) Authorizes the bidder to be selected on the basis of the best value to the governing board of the school district. Requires, in order to implement this method of selection, the governing board of the school district to adopt and publish procedures and required guidelines for evaluating the qualifications of the bidders that ensure the best value selections by the school district are conducted in a fair and impartial manner. Requires these procedures and guidelines to be mandatory for the school district when using best value selection.
- 3) Authorizes, if the governing board of the school district deems it to be in the best interest of the school district, the governing board of the school district, on the refusal or failure of the selected bidder for a project to execute a tendered contract, to award it to the bidder with the second lowest best value score. Authorizes, if the second bidder fails or refuses to execute the contract, the governing board of the school district to likewise award it to the bidder with the third lowest best value score.
- 4) Requires the governing board of the school district to let any contract for a project to the selected bidder that represents the best value or else reject all bids.
- 5) Requires, if the school district elects to award a project pursuant to the best value requirements, retention proceeds withheld by the school district from the selected best value contractor to not exceed 5% if a performance and payment bond, issued by an admitted surety insurer, is required in the solicitation of bids.
- 6) Requires, in a contract between the selected best value contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld to not exceed the percentage specified in the contract between the school district and the selected best value contractor. Authorizes, if the selected best value contractor provides written notice to a subcontractor that, prior to or at the time the bid is requested, a bond to be required and the subcontractor subsequently is unable or refuses to furnish a bond to the selected best value contractor, then the selected best value contractor may withhold retention proceeds in excess of the percentage specified in the contract

between the school district and the selected best value contractor from any payment made by the selected best value contractor to the subcontractor.

- 7) Requires all subcontractors bidding on contracts with best value procurement to be afforded the protection under the Subletting and Subcontracting Fair Practices Act, commencing with section 4100 of the Public Contract Code.
- 8) Requires the governing board of the school district to proceed in accordance with all of the following when awarding best value contracts:
 - a) Prepare a solicitation for bids and give notice;
 - b) Establish a procedure to prequalify bidders as specified. Requires information submitted by the bidder as part of the evaluation process to not be open to public inspection to the extent that information is exempt from disclosure under the California Public Records Act;
 - c) Requires a best value entity to not be prequalified or short-listed unless the entity provides an enforceable commitment to the governing board that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the project or contract that falls within an apprenticeable occupation in the building and construction trades;
 - d) Authorizes a best value entity to not use a skilled and trained workforce if either: the school district has entered into a project labor agreement (PLA) that will bind all contractors and subcontractors performing work on the project or contract to use a skilled and trained workforce, and the entity agrees to be bound by that PLA, a project or contract is performed under the extension of a PLA that was entered into by the school district prior to January 1, 2025, or the entity has entered into a PLA that will bind the entity and all its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.
- 9) Requires each solicitation for bids using best value to all of the following:
 - a) Invite prequalified bidders to submit sealed bids in the manner, as specified; and
 - b) Include a section identifying and describing all of the following:
 - i) Criteria that the school district will consider in evaluating the qualifications of the bidders;
 - ii) The methodology and rating or weighting system that will be used by the school district in evaluating bids; and
 - iii) The relative importance or weight assigned to the criteria for evaluating the qualifications of bidders identified in the request for bids.

- 10) Requires final evaluation of the bidders to be done in a manner that prevents the identity of the bidders and the cost or price information from being revealed in evaluating the qualifications of the bidders prior to completion of qualification scoring.
- 11) Defines “governing board” or “governing board of the school district” to mean the governing board of a school district authorized to use the best value procurement method, and excludes the LAUSD from the pilot due to the proposed permanent authorization for the LAUSD.
- 12) Repeals the authorization for best value procurement for all school districts, except the LAUSD, until January 1, 2031.

LAUSD only:

- 13) Makes permanent the authorization of the LAUSD governing board to use the best value procurement method.

EXISTING LAW:

- 1) Authorizes, until January 1, 2026, the LAUSD to use the best value procurement method. (Public Contract Code (PCC) 20119.2)
- 2) Requires the governing board of a school district to competitively bid and award to the lowest bidder contracts involving the following:
 - a) An expenditure of \$50,000 or more for the purchase of equipment, materials, or supplies, services (except for construction services), and repairs; and
 - b) An expenditure of \$15,000 or more for a public contract project defined as construction, reconstruction, erection, alteration, renovation, improvement, demolition, repair, painting or repainting of any publicly owned, leased, or operated facility. (PCC 20111 and 22002)
- 2) Requires the LAUSD to submit a report by January 1, 2025, prepared by an independent third party, to the appropriate policy and fiscal committees of the Legislature with specified information on the district’s use of the best value procurement method. (PCC 20119.5)
- 3) Establishes a process for school district governing boards to enter into a design-build contract for both the design and construction of education facility projects over \$1 million. (Education Code (EC) 17250.20)
- 4) Specifies the elements required to be included in a design-build request for proposal (including significant factors, subfactors, methodology, rating, and weighting schemes for evaluating proposals) and establishes, among others, prequalification, bonding and labor compliance program requirements. (EC 17250.10 – 17250.50)
- 5) Requires a school district with an average daily attendance of more than 2,500 using state school facility bond funds for a public project with an expenditure of \$1 million or more to require prospective bidders, and if utilized, all electrical, mechanical, and plumbing subcontractors, to complete and submit a standardized prequalification questionnaire and financial statement. (PCC 20111.6)

- 6) Authorizes the University of California (UC) to utilize the best value method to award contracts for projects over \$1 million. (PCC 10506.4)

FISCAL EFFECT: This bill has been keyed non-fiscal by the Office of Legislative Counsel.

COMMENTS:

Need for the bill. According to the author, “For the past 10 years, the LAUSD has been the only school district authorized to use the Best Value Procurement method for school construction projects. A recent independent report to the Legislature concluded that the LAUSD achieved expected benefits from the best value method including fewer change orders, less schedule delays, and fewer claims, resulting in contracting and administrative savings.

Following the passage of Proposition 2 and numerous other local school construction bonds approved by voters in November 2024, billions of dollars in state and local funds will be spent on school construction projects in the coming years in school districts across the state. It is imperative that districts have the necessary tools to reduce risk and maximize efficiencies that will result in the selection of a quality contractor with a good history at a competitive price. AB 361 simply removes the sunset on the LAUSD’s Best Value Procurement pilot program and expands the option statewide to any school district for public works projects over \$1 million that meet specified labor requirements.”

Key provisions of the bill. This bill would establish a pilot program for all school districts and provide the option to utilize best value procurement only for projects over \$1 million before December 31, 2030.

Current law authorizes the LAUSD to use the best value procurement method as a pilot until January 1, 2026. This bill would remove the sunset provisions for the best value procurement pilot for the LAUSD, and therefore make the authorization permanent for the LAUSD.

Background. Under current law, K-12 school districts are required to competitively bid on any public works contract over \$15,000 and award the contract to the lowest responsible bidder. Under the traditional method for school facility construction, a school district would first hire an architect to design a school facility and then issue a bid for the construction phase, awarding the contract to the lowest bidder. This process is commonly called “design-bid-build.”

Best value pilot program. AB 1185 (Ridley-Thomas), Chapter 786, Statutes of 2015, established a pilot program, until January 1, 2021, authorizing the LAUSD to use the “best value” procurement method. AB 1981 (Nazarian), Chapter 46, Statutes of 2020, extended the authority for the LAUSD to use the best value procurement method by five years, from January 1, 2021, to January 1, 2026. This bill would make the pilot permanent for the LAUSD, and create a new pilot for other school districts that meet the terms of the best value procurement method.

Best value is defined as a procurement process whereby the selected bidder may be selected on the basis of objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications. This method allows the district to consider “values” in addition to cost in awarding construction contracts, such as relevant experience and safety record. The authorization applies only to projects over \$1 million.

Expected benefits of best value include reduction in contract delays, change orders, and claims, resulting in contracting and administrative savings.

The LAUSD's authority to use best value was modeled after authorization given to the UC. The LAUSD is required to adopt procedures and guidelines for evaluating the qualifications of bidders to ensure that the process is fair and impartial, and procedures for protesting and resolving a contract award. A prequalification process based on a questionnaire and a rating scale is required. The solicitation for bids invites prequalified bidders to submit sealed bids. The district evaluates the bids based on answers to a separate best value questionnaire and assigns a qualification score. The bidder's price is then divided by its qualification score. The lowest resulting cost per quality point represents the best value bid.

Since 2015, other alternative means of contracting, including lease-leaseback and design build, have incorporated best value components.

Report to the Legislature. Demonstrates the LAUSD was required to complete a report by January 1, 2024, conducted by an independent entity. The 2024 report, *LAUSD Review of Best Value Procurement Method*, conducted by Sjoberg Evashenk Consulting, Inc., found that the LAUSD's use of the best value process has significantly increased while it continues to implement and follow compliant processes and practices over its best value procurement method. Specifically, the LAUSD:

- Implemented compliant and consistent prequalification procedures in addition to assessed and scored contractor prequalification questionnaires on safety, financial condition, insurance coverage, performance history, and labor compliance in accordance with required criteria;
- Employed more comprehensive criteria than required by law to evaluate best value contractors on factors including relevant experience, past performance demonstrated management competency, safety record, labor compliance, written project plans, and interview responses;
- Created and used standardized policies, procedures, and documents for scoring and award of projects using the best value procurement method that complied with PCC requirements;
- Maintained files for the 14 best value procured contracts we reviewed that were accurate, compliant, and well-documented; and
- Received and resolved the 14 contractor protests since 2020—with only two protests deemed to have merit. LAUSD did not meet its internal policy timelines for five protests received, but the COVID-19 pandemic likely affected these efforts.

Further, for the 56 projects the LAUSD completed since the inception of its best value procurement program since October 2016, the report stated that change orders affecting budgets and schedule delays were minimized as compared to formal traditional bids, and other benefits cited included fewer claims, increased quality of contractors, better controls in a collaborative setting, and enhanced safety.

Arguments in support. The LAUSD writes, “For the past 10 years, Los Angeles Unified has used the best value method to bid and award 109 school construction projects totaling nearly \$2 billion. As of April 2024, the LAUSD has completed 56 of these projects. An independent December 2024 report to the Legislature concluded that LAUSD was compliant, diligent, and accurate in its best value procurement practices and that the LAUSD achieved expected benefits from the best value method such as fewer change orders, less schedule delays, and fewer claims.

Following voter approval of Proposition 2 and numerous other local school construction bonds in November 2024, billions of dollars in state and local funds will be spent on school construction projects in the coming years. It is imperative that districts have the necessary tools to reduce risk and maximize efficiencies. The best value procurement process creates transparent and objective criteria that will result in the selection of quality school construction contractors with a good history at a competitive price.”

Recommended Committee Amendments. *Staff recommends that the bill be amended as follows:*

- Include county boards of education in the authorization to use the best value procurement bid method.
- Require school districts and county offices of education (COE) that use the best value procurement method to submit a report on the use of the procurement method to the appropriate policy and fiscal committees of the Legislature. Require the report be prepared by an independent third party and the school district or COE to pay for the cost of the report. Authorize multiple school districts and county offices of education to work together to submit a single report reflecting each of the participating school districts and COEs. Require the report to be submitted on or before January 1, 2030, to the appropriate policy and fiscal committees of the Legislature.

Related legislation. AB 1981 (Nazarian), Chapter 46, Statutes of 2020, extends the authority for the LAUSD to use the best value procurement method by five years, from January 1, 2021, to January 1, 2026.

AB 1185 (Ridley-Thomas), Chapter 786, Statutes of 2015, authorized the LAUSD to utilize the best value procurement method.

AB 1971 (Bocanegra) of 2014, held by the author on the Senate floor, was similar to AB 1185.

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Office of Education
 California Association of School Business Officials (CASBO)
 Los Angeles Unified School District
 San Diego Unified School District
 State Building & Construction Trades Council of California

Opposition

None on file

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