

Date of Hearing: May 6, 2020

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 1981 (Nazarian) – As Amended February 24, 2020

SUBJECT: Los Angeles Unified School District: best value procurement

SUMMARY: Extends the sunset of the authorization for the Los Angeles Unified School District (LAUSD) to use the best value procurement method by five years, from January 1, 2021, to January 1, 2026. Specifically, **this bill:**

- 1) Finds and declares that the best value procurement method has provided the benefits of more qualified contractors applying and an open dialogue on project approach, according to the Los Angeles Unified School District's interim report to the Legislature from June 2018, titled "Los Angeles Unified School District, Interim Report on Best Value Procurement Method."
- 2) Updates the date by which the district has extended or renewed a project labor agreement from January 1, 2017 to January 1, 2020, in order to be exempt from the requirement to use a skilled and trained workforce.
- 3) Requires the LAUSD to submit a report, paid for by the school district and conducted by an independent entity, to the appropriate policy and fiscal committees of the Legislature by January 1, 2025.
- 4) Strikes obsolete provisions.

EXISTING LAW:

- 1) 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.
 - 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. (Public Contract Code (PCC) 20111 and 22002)
- 2) Authorizes, until January 1, 2021, the LAUSD to use the best value procurement method. (PC 20119.1)
- 3) Requires the LAUSD to submit an interim report by July 1, 2018, and a final report by January 1, 2020, 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)

- 4) Establishes a process, until January 1, 2025, 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)
- 5) 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 – 17250.55)
- 6) 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 Section 20111.6)
- 7) 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:

Background. Under current law, K-12 school districts are required to competitively bid 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 LAUSD to use 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.

LAUSD's authority to use design build was modeled after authorization given to the UC. 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. LAUSD was required to complete an interim report by July 1, 2018, and a final report by January 1, 2020, conducted by an independent entity. The final report, completed in November, 2019, concluded that the LAUSD complied with the statutory requirements for implementation of the best value procurement method and the “completed projects generally realized expected benefits.” Some of the highlights from the report include the following:

- The LAUSD awarded 16 best value contracts, two of which were later terminated. The 14 remaining contracts represents 5% of the total number of contracts awarded and 19% of the total dollar value awarded for all LAUSD construction contracts between January 1, 2016, and October 31, 2019.
- As of the date of the report, four of the 14 projects had been completed and four were near completion.
- In comparison with non-best value projects, best value projects received minimal scheduling delays. One best value project that received more significant delays was due to design errors and not the contracting process.
- LAUSD received four award protests and generally resolved the protests in a timely manner. Three of the protests were deemed to be without merit. One was found to have merit and the project was subsequently re-scoped and rebid.
- Change orders (8.5% of total awarded costs) were below general industry standard of 10%.
- Other benefits identified by the district:
 - Interest from a larger pool of firms and more qualified firms.
 - Better communication on project approach due to interviews conducted with potential bidders.
 - Increase in quality subcontractors due to subcontractor scoring.

This bill extends the January 1, 2021, sunset by five years, to January 1, 2026, and requires LAUSD to submit a report, paid for by the school district and conducted by an independent entity, to the appropriate policy and fiscal committees of the Legislature by January 1, 2025. The authority for the UC to use best value is available to all UC campuses.

The Committee may wish to consider whether the best value authorization should be expanded to all school districts. Districts would not be required to utilize alternative means of contracting, but would be provided with an additional option to seek qualified contractors and subcontractors.

Recommended Committee Amendments. *Staff recommends an amendment* in the findings section to change the reference of the report submitted by LAUSD from “interim report” to “final report.”

Arguments in support. The author states, “AB 1981 simply extends the sunset on LAUSD’s ability to use this [best value procurement] method by five years so the state can continue to evaluate this model for other school districts. It also modifies the reporting dates to reflect this

extension. With billions of dollars in state and local funds being spent on school construction projects throughout the state, it is imperative school districts have the necessary tools to reduce risk and maximize efficiencies. The best value procurement method creates transparent and objective criteria that will result in the selection of a quality contractor with a good history at a competitive price.”

Related legislation. 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

Los Angeles Unified School District
State Building & Construction Trades Council of California

Opposition

None on file

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