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AB-3186 Public postsecondary education: University of California: California Community Colleges: competitive bidding: best value. (2017-2018)

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Assembly Bill No. 3186

CHAPTER 725

An act to amend Sections 10507.8 and 20651.7 of the Public Contract Code, relating to public postsecondary education.

[Approved by Governor September 23, 2018. Filed with Secretary of State September 23, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3186, Medina. Public postsecondary education: University of California: California Community Colleges: competitive bidding: best value.

Existing law establishes the University of California, under the administration of the Regents of the University of California, and the California Community Colleges, under the administration of the Board of Governors of the California Community College, as 2 of the segments of public postsecondary education in this state. Existing law establishes community college districts, administered by governing boards, throughout the state, to provide instruction to students.

Existing law requires the Regents of the University of California, except as provided, to let all contracts involving an expenditure of more than \$100,000 annually for goods and materials or services to the lowest responsible bidder meeting certain specifications, or to reject all bids. Existing law requires the governing board of any community college district to let specified contracts involving an expenditure of more than \$50,000 to the lowest responsible bidder meeting certain specifications, or else reject all bids. Existing law, until January 1, 2019, provides that the bid evaluation and selection for these contracts may be determined by the best value for the University of California or the community college district, as specified. Existing law makes a violation of these provisions relating to the University of California a crime. Existing law provides for the University of California and the California Community Colleges to report to the Legislative Analyst regarding the use of best value procurement, and requires the Legislative Analyst to report to the Legislature in this regard by February 1, 2018.

This bill would delete the January 1, 2019, repeal date applicable to best value procurement authority, thereby extending operation of these provisions indefinitely and would delete the references to the reports described above regarding use of best value procurement by the University of California and community college districts. By extending these provisions relating to the University of California indefinitely, the bill would expand an existing crime, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10507.8 of the Public Contract Code is amended to read:

10507.8. (a) As provided for in this article, when the University of California determines that it can expect long-term savings through the use of life-cycle cost methodology, the use of more sustainable goods and materials, and reduced administrative costs, the lowest responsible bidder may be selected on the basis of the best value to the university. In order to implement this method of selection, the Regents of the University of California shall adopt and publish policies and guidelines for evaluating bidders that ensure that best value selections by the university are conducted in a fair and impartial manner. These policies and guidelines shall conform to the requirements of subdivisions (c) and (d) and shall be applicable to the university when using best value as the bid evaluation methodology.

(b) For the purposes of this section, the following definitions apply:

(1) "Best value" means the most advantageous balance of price, quality, service, performance, and other elements, as defined by the university, achieved through methods in accordance with this section and determined by objective performance criteria that may include price, features, long-term functionality, life-cycle costs, overall sustainability, and required services.

(2) "Best value agreement" means an agreement entered into pursuant to the provisions of this section.

(3) "Best value awardee" means the lowest responsible bidder or bidders that are awarded an agreement for goods, materials, or services that was awarded through the use of best value for the bid evaluation methodology.

(4) "Best value criteria" means those criteria set forth in subdivision (d).

(5) "University" means all current campuses and locations of the University of California, including the medical centers, the national laboratories, and any future University of California campuses and locations.

(c) (1) The university shall consider all of the following when adopting policies and guidelines pursuant to subdivision (a):

(A) Price and service proposals that reduce the university's overall operating costs.

(B) Supply and material standards that support the university's strategic sourcing initiatives.

(C) A procedure for bid protest and resolution.

(2) The university shall award a best value agreement as follows:

(A) The university shall evaluate bidders based solely upon the best value criteria set forth in the solicitation documents. Solicitation for bids shall describe the best value criteria that the university will consider in evaluating the bidders by overall category and by specific attributes.

(B) The university shall award the agreement to the lowest responsible bidder or bidders whose bid or bids are determined by the university to be the best value in terms of price, quality, service, and performance, and that meet the university's requirements.

(C) Bid participants that are not awarded a best value agreement shall be notified in writing at the end of the agreement award process.

(d) For the purposes of this section, the university may take into consideration any of the following best value criteria when awarding a best value agreement for goods, materials, and services:

(1) The total cost to the university of its use or consumption of goods, materials, and services.

(2) The operational cost or benefit incurred by the university as a result of a contract award.

(3) The added value to the university, as defined in the request for proposal, of vendor-added services.

(4) The quality and effectiveness of goods, materials, and services.

(5) The use of more sustainable goods and materials in the manufacturing of the goods and materials and the packaging of these products.

(6) The reliability and timeliness of delivery and installation.

(7) The terms and conditions of product warranties, maintenance, and vendor guarantees.

(8) The vendor's quality assurance, continuous improvement, and business resumption programs and their benefit to the university.

(9) The vendor's experience with the timely provision of goods, materials, and services.

(10) The consistency of quality and availability of the vendor's proposed supplies, materials, and services with the university's overall procurement program.

(11) The economic benefits to the local community, including, but not limited to, job creation or retention and the support of small and local businesses.

(e) The university shall ensure that all businesses have a fair and equitable opportunity to compete for, and participate in, the university best value bids and shall also ensure that discrimination in the award and performance of the agreement does not occur on the basis of gender, marital status, ancestry, medical condition, or any characteristic listed or defined in Section 11135 of the Government Code, or retaliation for having filed a discrimination complaint or protest in the performance of university contractual obligations.

(f) This section applies solely to the procurement of goods, materials, or services and shall not apply to construction contracts.

(g) Except as otherwise provided in this article, this article is not intended to change in any manner any guideline, criteria, procedure, or requirement of the Regents of the University of California to let any contract for goods, materials, or services to the lowest responsible bidder meeting certain specifications or to reject all bids.

SEC. 2. Section 20651.7 of the Public Contract Code is amended to read:

20651.7. (a) For the purposes of bid evaluation and selection pursuant to subdivision (a) of Section 20651, when a community college district determines that it can expect long-term savings through the use of life-cycle cost methodology, the use of more sustainable goods and materials, and reduced administrative costs, the community college district may provide for the selection of the lowest responsible bidder on the basis of best value pursuant to policies and procedures adopted by the governing board in accordance with this section.

(b) For purposes of this section, "best value" means the most advantageous balance of price, quality, service, performance, and other elements, as defined by the governing board, achieved through methods in accordance with this section and determined by objective performance criteria that may include price, features, long-term functionality, life-cycle costs, overall sustainability, and required services.

(c) A community college district shall consider all of the following when adopting best value policies pursuant to subdivision (a):

(1) Price and service level proposals that reduce the district's overall operating costs, including end-of-life expenditures and impact.

(2) Equipment, services, supplies, and materials standards that support the community college district's strategic acquisition and management program direction.

(3) A procedure for protest and resolution.

(d) A community college district may consider any of the following factors if adopting policies and procedures pursuant to subdivision (c):

(1) The total cost to the community college district of its purchase, use, and consumption of equipment, supplies, and materials.

(2) The operational cost or benefit incurred by the community college district as a result of a contract award.

(3) The added value to the community college district, as defined in the request for proposal, of vendor-added services.

(4) The quality and effectiveness of equipment, supplies, materials, and services.

(5) The reliability of delivery and installation schedules.

(6) The terms and conditions of product warranties and vendor guarantees.

(7) The financial stability of the vendor.

(8) The vendor's quality assurance program.

(9) The vendor's experience with the provisions of equipment, supplies, materials, and services within the institutional marketplace.

(10) The consistency of the vendor's proposed equipment, supplies, materials, and services with the district's overall supplies and materials procurement program.

(11) The economic benefits to the local community, including, but not limited to, job creation and retention.

(12) The environmental benefits to the local community.

(e) A community college district awarding a contract under this section shall award a contract to the lowest responsible bidder whose proposal is determined, in writing by the community college district, to be the best value to the community college district based solely on the criteria set forth in the request for proposal.

(f) The governing board of a community college district shall issue a written notice of intent to award supporting its contract award and stating in detail the basis of the award. The notice of the intent to award and the contract file must be sufficient to satisfy an external audit.

(g) The governing board of a community college district shall publicly announce its award, identifying the bidder to which the award is made, the price proposal of the contractor awarded the contract, and the overall combined rating on the request for proposal evaluation factors. The announcement shall also include the ranking of the contractor awarded the contract in relation to all other responsive bidders and their respective price proposals and summary of the rationale for the contract award.

(h) The community college district shall ensure that all businesses have a fair and equitable opportunity to compete for, and participate in, district contracts and shall also ensure that discrimination, as described in subdivision (e) of Section 12751.3 of the Public Utilities Code, in the award and performance of contracts does not occur.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.