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**AB-356 Los Angeles Community College District: best value procurement: pilot program.** (2019-2020)

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**Assembly Bill No. 356**

**CHAPTER 173**

An act to add and repeal Article 41.3 (commencing with Section 20663) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to best value procurement.

[ Approved by Governor August 30, 2019. Filed with Secretary of State August 30, 2019. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 356, Santiago. Los Angeles Community College District: best value procurement: pilot program.

The Local Agency Public Construction Act requires the governing board of any community college 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 Community College District to use, before December 31, 2024, 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 community college district to submit an interim and final report to the appropriate policy and fiscal committees of the Legislature on the use of the best value procurement method pursuant to the bill, in accordance with a specified schedule. These provisions would be repealed on January 1, 2025.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Los Angeles Community College District.

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

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

**SECTION 1.** Article 41.3 (commencing with Section 20663) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

**Article 41.3. Los Angeles Community College District — Best Value Procurement**

**20663.** (a) It is the intent of the Legislature to enable the Los Angeles Community College District to use cost-effective options for building and modernizing community college facilities. The Legislature has recognized the merits of the best value procurement method process in the past by authorizing its use for projects undertaken by the University of California.

(b) The Legislature also finds and declares that community college districts using the best value procurement method require a clear understanding of the roles and responsibilities of each participant in the best value process. As reflected in the University of

California report to the Legislature, the benefits of a best value procurement method include a reduction in contract delays, change orders, and claims producing a savings in both contract costs and administration.

(c) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building community college construction projects that can be used by the Los Angeles Community College District as a pilot program.

**20663.1.** As used in this article:

(a) "Best value" means 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.

(b) "Best value contract" means a competitively bid contract entered into pursuant to this article.

(c) "Best value contractor" means a properly licensed person, firm, or corporation that submits a bid for and is awarded a best value contract.

(d) "Best value score" means the resulting score when the community college district divides the bidder's price by the bidder's qualification score.

(e) "Demonstrated management competency" means the experience, competency, capability, and capacity of the proposed management staffing to complete projects of similar size, scope, or complexity.

(f) "Financial condition" means the financial resources needed to perform the contract. The criteria used to evaluate a bidder's financial condition shall include, at a minimum, capacity to obtain all required payment bonds and required insurance.

(g) "Governing board" or "governing board of the community college district" means the governing board of the Los Angeles Community College District.

(h) "Labor compliance" means the ability to comply with, and past conformance with, contract and statutory requirements for the payment of wages and qualifications of the workforce. The criteria used to evaluate a bidder's labor compliance shall include, at a minimum, the bidder's ability to comply with the apprenticeship requirements of the California Apprenticeship Council and the Department of Industrial Relations, its past conformance with those requirements, and its past conformance with requirements to pay prevailing wages on public works projects.

(i) "Project" has the same meaning as "public project" as defined in subdivision (c) of Section 22002.

(j) "Qualifications" means financial condition, relevant experience, demonstrated management competency, labor compliance, the safety record of the bidder, and, to the extent relevant, the preceding qualifications as they pertain to all subcontractors proposed to be used by the bidder for designated portions of the work.

(k) "Relevant experience" means the experience, competency, capability, and capacity to complete projects of similar size, scope, or complexity.

(l) "Safety record" shall be deemed "acceptable" if a contractor's experience modification rate for the most recent three-year period is an average of 1.00 or less, and its average total recordable injury or illness rate and average lost work rate for the most recent three-year period do not exceed the applicable statistical standards for its business category or if the bidder is a party to an alternative dispute resolution system as provided for in Section 3201.5 of the Labor Code.

(m) "Community college district" means the Los Angeles Community College District.

**20663.2.** (a) This article provides for a pilot program for the Los Angeles Community College District to use best value procurement for projects over one million dollars (\$1,000,000).

(b) The governing board, for projects over one million dollars (\$1,000,000), before December 31, 2024, may use the best value procurement method in accordance with this article.

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

(d) If the governing board of the community college district deems it to be for the best interest of the community college district, the governing board of the community college district, on the refusal or failure of the selected bidder for a project to execute a tendered contract, may award it to the bidder with the second lowest best value score. If the second bidder fails or refuses to

execute the contract, the governing board of the community college district may likewise award it to the bidder with the third lowest best value score.

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

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

(2) 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 shall not exceed the percentage specified in the contract between the district and the selected best value contractor. 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 may 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 district and the selected best value contractor from any payment made by the selected best value contractor to the subcontractor.

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

**20663.3.** The governing board of the community college district shall proceed in accordance with the following when awarding best value contracts under this article:

(a) The community college district shall prepare a solicitation for bids and give notice pursuant to Section 81641 of the Education Code.

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

(c) (1) A bidder shall not be prequalified or shortlisted unless the bidder provides an enforceable commitment to the community college district that the bidder 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, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1.

(2) This subdivision shall not apply if any of the following requirements are met:

(A) The community college district has entered into a project labor agreement that will bind all contractors and subcontractors performing work on the project to contract to use a skilled and trained workforce, and the bidder agrees to be bound by that project labor agreement.

(B) The project or contract is being performed under the extension or renewal of a project labor agreement that was entered into by the community college district prior to January 1, 2020.

(C) The bidder has entered into a project labor agreement that will bind the bidder and all of its subcontractors at every tier performing the project or contract to use a skilled and trained workforce.

(3) For purposes of this subdivision, "project labor agreement" has the same meaning as in paragraph (1) of subdivision (b) of Section 2500.

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

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

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

(A) Criteria that the community college district will consider in evaluating the qualifications of the bidders.

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

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

(e) Final evaluation of the bidders shall 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.

**20663.4.** Selection of the best value contractor shall be made as follows:

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

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

(A) Relevant experience.

(B) Safety record.

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

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

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

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

**20663.5.** (a) (1) A community college district that uses the best value procurement method pursuant to this article shall submit to the appropriate policy and fiscal committees of the Legislature an interim and final report on the use of the best value procurement method. The reports shall be prepared by an independent third party and the community college district shall pay for the cost of the report. The reports shall be submitted to the appropriate policy and fiscal committees of the Legislature in compliance with Section 9795 of the Government Code as follows:

(A) An interim report on or before July 1, 2022.

(B) A final report on or before January 1, 2024.

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

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

(B) The contract award amounts.

(C) The best value contractors awarded the projects.

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

(E) A description of the prequalification process.

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

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

(b) The requirement for submitting a report imposed pursuant to subdivision (a) is inoperative on January 1, 2024, pursuant to Section 10231.5 of the Government Code.

**20663.6.** Except as otherwise provided in this article, the best value procurement method is not intended to change any guideline, criterion, procedure, or requirement of the governing board of the community college district to let a contract for a project to the

lowest responsible bidder or else reject all bids.

**20663.7.** This article shall remain in effect only until January 1, 2025, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2025, deletes or extends that date.

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