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AB-1981 Los Angeles Unified School District: best value procurement. (2019-2020)

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Assembly Bill No. 1981

CHAPTER 46

An act to amend Sections 20119, 20119.1, 20119.2, 20119.3, 20119.5, and 20119.7 of the Public Contract Code, relating to best value procurement.

[Approved by Governor September 09, 2020. Filed with Secretary of State September 09, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1981, Nazarian. Los Angeles Unified School District: best value procurement.

Existing law establishes a pilot program authorizing 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 pilot program establishes various requirements applicable to the use of the best value procurement method under the authorization. Existing law requires the school 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 as provided and in accordance with a specified schedule. These provisions are repealed on January 1, 2021.

This bill would extend the pilot program authorization for the school district to use the best value procurement method for projects before December 31, 2025, delete the interim report deadline, extend the remaining report deadline, and extend the repeal date for the pilot program to January 1, 2026.

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 Local Program: no

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

SECTION 1. Section 20119 of the Public Contract Code is amended to read:

20119. (a) It is the intent of the Legislature to enable school districts to use cost-effective options for building and modernizing school 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 school 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) The Legislature further 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 final report to the Legislature from November 2019, titled "Los Angeles Unified School District, Final Report on Best Value Procurement Method."

(d) It is the intent of the Legislature to provide an optional, alternative procedure for bidding and building school construction projects.

SEC. 2. Section 20119.1 of the Public Contract Code is amended to read:

20119.1. 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 school 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 school district" means the governing board of the Los Angeles Unified School 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 such 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 the contractor's 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) "School district" means the Los Angeles Unified School District.

SEC. 3. Section 20119.2 of the Public Contract Code is amended to read:

20119.2. (a) This article provides for a pilot program for the Los Angeles Unified School 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, 2025, 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 school district. In order to implement this method of selection, the governing board of the school district shall 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. These procedures and guidelines shall conform to this article and shall be mandatory for the school district when using best value selection.

(d) If the governing board of the school district deems it to be for 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, 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 school district may likewise award it to the bidder with the third lowest best value score.

(e) The governing board of the school 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 school 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.

SEC. 4. Section 20119.3 of the Public Contract Code is amended to read:

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

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

(b) (1) The school 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).

(2) A best value entity shall not be prequalified or shortlisted 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 apprenticeshipable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1.

(3) Paragraph (2) shall not apply if any of the following requirements are met:

(A) The school district has entered into a project labor agreement 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 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 school district prior to January 1, 2020.

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

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

(c) 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 school district will consider in evaluating the qualifications of the bidders.

(B) The methodology and rating or weighting system that will be used by the school 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.

(d) 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.

SEC. 5. Section 20119.5 of the Public Contract Code is amended to read:

20119.5. (a) (1) A school district that uses the best value procurement method pursuant to this article shall submit to the appropriate policy and fiscal committees of the Legislature a report on the use of the best value procurement method. The report shall be prepared by an independent third party and the school district shall pay for the cost of the report. The report shall be submitted on or before January 1, 2025, to the appropriate policy and fiscal committees of the Legislature.

(2) The 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, 2026, pursuant to Section 10231.5 of the Government Code.

SEC. 6. Section 20119.7 of the Public Contract Code is amended to read:

20119.7. This article shall remain in effect only until January 1, 2026, and as of that date is repealed.

SEC. 7. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the continued need for the Los Angeles Unified School District to determine the potential benefits and consequences of using best value procurement to facilitate infrastructure improvements and ease fiscal impacts.