

Date of Hearing: June 26, 2024

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Juan Carrillo, Chair

SB 1325 (Durazo) – As Amended April 10, 2024

SENATE VOTE: 30-8

SUBJECT: Public contracts: best value procurement: goods

SUMMARY: Allows public entities to use a “best value procurement method” when awarding contracts for goods over \$250,000 instead of awarding them utilizing the traditional “lowest responsible bidder” method. Specifically, **this bill:**

- 1) Authorizes a public entity to use the best value procurement method for the purchase of goods with a base value of \$250,000 or more, as specified.
- 2) Requires the public entity to adopt and publish procedures and guidelines for evaluating the qualifications of bidders that ensure the best value selections are conducted in a fair and impartial manner. These procedures and guidelines may include, but are not limited to, the adoption of a high road jobs plan.
- 3) Requires, in addition to disclosure of the minimum requirements for qualification, the solicitation document to specify what criteria, in addition to price, shall be given a weighted value. The public entity shall use a scoring method based on those factors and price in determining the successful bid. Any evaluation and scoring method shall ensure substantial weight is given to the contract price.
- 4) Requires the public entity to let any contract for a project pursuant to this bill to the selected bidder that represents the best value or shall reject all bids.
- 5) Allows a public entity to award all contracts for the purchase of municipal fleets by using a best value procurement method that includes a high road jobs plan policy.
- 6) Defines “best value procurement” to mean a process by which a contract award is determined by objective criteria related to price, quality, and other qualifications, including, but not limited to, the following:
 - a) Product performance, productivity, and safety standards;
 - b) The supplier’s ability to perform the contract requirements;
 - c) Environmental benefits, including the reduction of greenhouse gas emissions;
 - d) Community benefits, including the bidder’s participation in or commitments to a community benefits agreement, targeted hiring program, or high road training program; and
 - e) Job quality benefits, as determined by a high road jobs plan policy;

- 7) Defines “community benefits agreement” to mean a legally binding contract between a private entity and at least one stakeholder organization that details specific, measurable, and enforceable commitments to a specified community.
- 8) Defines “high road jobs plan” to mean a component of an application submitted by applicants for public contracts where bidders are required to state, at a minimum, all of the following:
 - a) The minimum number of full-time equivalent jobs that will be retained and created if awarded a contract;
 - b) The minimum wage and benefit amounts by job classification for nonsupervisory workers on the contract;
 - c) The minimum number of jobs that will be specifically retained and created for individuals with employment barriers if awarded the contract;
 - d) Detailed information regarding any targeted hiring programs, community benefits agreements, high road training programs, or registered apprenticeship programs; and
 - e) A statement that all workers are properly classified and an acknowledgment that knowingly submitting false information is a violation of the False Claim Act.
- 9) Defines “high road jobs plan policy” to mean a policy by which a public entity evaluates bidders’ high road job plan commitments as part of the overall score of the public contract, and incorporates these commitments into selected applicant’s final contract as a material term.
- 10) Defines “high road training program” to mean a program that provides comprehensive, equitable, and standardize training to a diverse set of participants, including, but not limited to, the following”
 - a) A program that includes a standardized curriculum resulting in an industry-recognized credential, that includes measurable goals, regular reporting, and accountability standards to assess program effectiveness;
 - b) Wages and stipends for program participants, including assistance with tuition, supplies, and materials;
 - c) Pay increase tied to new skills gained and trainings completed; and
 - d) Formalized agreements with a public entity, nonprofit, or labor organization to support the training program, whose purpose aligns with the program’s goals, or high road training partnerships, as defined
- 11) Defines “public entity” to mean the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state.

- 12) Defines “stakeholder organization” to mean a nonprofit, unincorporated association of local impacted community members, or a labor organization whose purpose aligns with the program, project, or agreement’s goal.
- 13) Defines “targeted hiring program” to mean a program that meets all of the following conditions:
 - a) Meaningful outreach and recruitment activities and measurable hiring goals specifically targeted to individuals with employment barriers or displaced workers;
 - b) Hiring practices developed to provide fair access to and support the hiring of individuals with employment barriers; and
 - c) Collaboration with community groups or public entities to directly support skill and career development for individuals with employment barriers, as well as provide wraparound services as needed by particular communities, such as transportation assistance or childcare vouchers.

FISCAL EFFECT: According to the Senate Appropriations Committee: “The Department of General Services (DGS) notes this bill creates a new acquisition method and evaluation criteria, which will take a minimum of 3 years to implement and require additional limited-term and permanent staff at the Associate Governmental Program Analyst level to implement procurement policies, procedures, and trainings. DGS estimates General Fund costs ranging from \$1.89 million to \$2.22 million annually for the first two years of program implementation and \$1.06 million to \$1.39 million annually ongoing.”

COMMENTS:

- 1) **Bill Summary.** This bill authorizes a public entity to use the best value procurement method for the purchase of public goods with a base value of \$250,000 or more if the entity adopts and publishes procedures and guidelines for evaluating the qualifications of bidders that ensure the best value selections are conducted in a fair and impartial manner.

This bill requires the solicitation documents to specify what criteria, in addition to price, shall be given a weighted value and requires the entity to use a scoring method based on those factors and price in determining the successful bid. Any evaluation and scoring method shall ensure substantial weight is given to the contract price. This bill requires the entity to let any contract for a project pursuant to this section to the selected bidder that represents the best value or shall reject all bid. This bill authorizes a public entity to use a best value procurement method that includes a high road jobs plan policy to purchase municipal fleets.

This bill defines “public entity” to mean the state, county, city, city and county, district, public authority, public agency, municipal corporation, or any other political subdivision or public corporation in the state.

This bill is sponsored by Jobs to Move America.

- 2) **Author’s Statement.** According to the author, “I have worked my entire life, as a migrant farmworker and in my career, to make California more equitable. Now – in the midst of a seismic change in our economy – the greatest transformation since the Industrial Revolution – we cannot make the same mistakes of the past. A commitment to climate equity means a commitment to workers.

“As our state receives once-in-a-generation funding from the federal government and makes historic investments of our own, we continue to have the highest supplemental poverty rate of any state in our country. We must go beyond “job creation” – this is about access to high paid jobs and quality training.

“As the largest recipient of federal infrastructure funds complementing what our state and local governments are spending on transportation and climate adaptation, California can lead the way for people building these projects in our local communities.”

- 3) **Public Procurement.** The majority of public sector contracts in California are awarded on a low-bid basis where the contractor submitting the lowest bid that meets specified criteria is awarded the contract. When procuring goods and services, the state seeks to promote fair and open competition that is free from bias and favoritism. To this end, statute includes various requirements for the procurement of goods and services, particularly those of significant monetary value. Specifically, statute sets certain monetary thresholds above which agencies generally must use a competitive bidding process to advertise and solicit bids before selecting a vendor.

While the low-bid procurement system has promoted open competition, there are concerns that a system based strictly on the lowest price does not provide the best overall product value and can result in higher costs over the long-term. In California, DGS sets state procurement policies and provides purchasing services for all state departments. However, in certain circumstances DGS delegates purchasing authority to individual state departments, such as Caltrans for the procurement of heavy mobile fleet vehicles and special equipment.

Over the years, the state has authorized both state and local agencies to use various other types of procurement processes in the awarding of contracts. For example, in 2014, SB 785 (Wolk, Chapter 931, Statutes of 2014) was signed into law which authorized specified state agencies, until January 1, 2025, and specified local agencies to use design-build for public work contracts in excess of \$1 million. Under design-build, the public agency contracts with a single entity—which can be a single firm, a consortium, or a joint venture—to design and construct a project. Before inviting bids, the owner prepares documents that describe the basic concept of the project, as opposed to a complete set of drawings and specifications of the final product. In the bidding phase, the owner typically evaluates bids on a best-value basis, incorporating technical factors, such as qualifications and design quality, in addition to price.

Progressive design-build is a more recent variant on traditional design-build contracting. While there is some variation, the progressive design-build model generally includes two phases. In the first phase, the awarding authority uses a best value process to select a design-build entity who completes preliminary plans and preconstruction services necessary to provide a cost estimate and final design proposal. The project then “progresses” to the second phase of the project, where the awarding authority and the design-build entity agree to a final

design, project cost, and schedule. If they cannot agree, there is an “off ramp” between the two phases where the awarding authority can pursue other options, but still benefit from having the first phase work complete. This is different from traditional design-build where the awarding entity contracts with a single entity to design and construct a project at a set price before design work begins, and without a similar off ramp.

- 4) **Best Value Procurement.** The best value procurement process is a procurement process whereby a bidder may be selected on the basis of objective evaluation criteria representing the best combination of price and qualifications. The process allows the contracting agency to consider “values” in addition to cost in awarding contracts, such as community benefit goals. Under design-build, the public agency contracts with a single entity—which can be a single firm, a consortium, or a joint venture—to design and construct a project. Before inviting bids, the owner prepares documents that describe the basic concept of the project, as opposed to a complete set of drawings and specifications of the final product. In the bidding phase, the owner typically evaluates bids on a best-value basis, incorporating technical factors, such as qualifications and design quality, in addition to price.

The best value criteria can include factors such as lifetime costs, use of sustainable materials or practices, experience, timeliness, terms and conditions, or economic benefits to the community. The bidder with the highest score (not necessarily the lowest bid) receives the contract. Though not without its draw backs, best value procurement potentially can yield long-term state savings while avoiding the hassle of hiring vendors unlikely to perform adequately. In order for a state or local agency to use the best value procurement method described in this bill, they must first adopt and publish procedures and guidelines for evaluating the qualifications of bidders in order to ensure the best value selections are conducted in a fair and impartial manner.

The author’s office argues that currently, state agencies face a confusing patchwork of best value procurement authorization within state code. Some agencies have explicit permission to utilize best value procurement while others do not, and some have authorization to enter into best value contracts but only under specific circumstances. This bill would explicitly provide the authority for state and local agencies to use best value procurement for equipment purchases over \$250,000.

- 5) **DGS and Caltrans Pilot Program.** AB 1857 (Frazier), Chapter 381, Statutes of 2014, created the best value procurement pilot program, authorizing DGS to test the effectiveness of the “best value procurement” method when purchasing heavy fleet vehicles and special equipment for Caltrans. The bill also required DGS to evaluate the best value procurement program and recommend whether the process should be continued on June 1, 2020. Subsequent legislation extended the sunset date to January 1, 2022, and increased the cap from \$20 million to \$50 million per fiscal year.

DGS and Caltrans created a team to collaborate on various aspects of the procurement process. For each procurement, Caltrans was responsible for selecting the equipment type and specifications for purchase and defining a “performance and productivity” criteria for point allocation. DGS was responsible for specification review to ensure competition; drafting the solicitation package; and conducting the solicitation, including any protested awards.

In their report on the program, DGS and Caltrans stated the benefits, including that the program allowed participation from bidders who would normally be priced out of competition and the ability to use best value procurement to ensure purchased equipment would meet environmental requirements. DGS and Caltrans also noted lessons learned from the program, including the need to streamline the Request for Proposal solicitation package for bidders, and determining the appropriate scoring criteria and timeframes for solicitations. The report also noted that while legislation set the purchasing limit at \$50 million, the program threshold should instead be based on Caltrans' delegated budget authority of purchasing equipment.

In conclusion, DGS and Caltrans stated, "the project was an overall success. Twenty-nine of the 30 projects were awarded to bidders who offered performance and productivity upgrades. DGS and Caltrans were also able to determine what factors worked well and what factors need to be improved upon to encourage more participation. By implementing what we've learned, we hope to accomplish even greater success in the future."

- 6) **Best Value for Counties.** SB 762 (Wolk), Chapter 627, Statutes of 2015, established a pilot program until January 1, 2020, that allowed the counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, Solano, and Yuba to award contracts for construction projects in excess of \$1 million to the bidder representing the best value.

Participating counties must satisfy a number of requirements in order to use this authority, including:

- a) Adopting and publishing procedures and required criteria that ensure all selections are conducted in a fair and impartial manner.
- b) Evaluating at a public meeting the alternative of awarding the contract on the basis of the lowest bid price.
- c) Making a written finding that awarding a contract on the basis of best value will reduce project costs, expedite project completion, and/or provide features not achievable via the low-bid method.
- d) Preparing bid solicitations and providing notice as required by the Local Agency Public Construction Act (LAPC Act), and complying with the Subcontracting Fair Practices Act regarding subcontractors identified in a bid.
- e) Establishing prequalification procedures in accordance with the LAPC Act.
- f) Including in bid solicitations the criteria and rating system a county will consider in evaluating bids.
- g) Prequalifying or shortlisting only those contractors who provide an enforceable commitment to use a skilled and trained workforce to perform all work on the project that falls within an apprenticeable occupation, with specified exceptions.
- h) Appointing an evaluation committee, which must evaluate bidders solely upon the criteria in the bid solicitations and assign a qualifications score to each bid.

- i) Determining best value by dividing each bidder's price by its qualifications score, with the lowest cost per quality point representing the best value bid.
- j) Publicly announcing bid awards, including the score of the selected contractor in relation to all other bidders.
- k) Submitting a report to the Legislature, including information about the county's use of the bill's authority, before the pilot program sunsets.

SB 793 (Hill) Chapter 627, Statutes of 2017, expanded the pilot program with the following provisions:

- a) Adding San Mateo County to the list of counties authorized to use the pilot program.
- b) Allowing counties in the pilot program to also use the program's best value contracting method to award individual annual contracts for repair, remodeling, or other repetitive work to be done according to unit prices – also known as job order contracting or a job order contract. These contracts cannot exceed \$3 million, adjusted for inflation, and must be based on plans and specifications for typical work. They also cannot be for new construction. Best value criteria must be applied to the annual contract for construction services, rather than to an individual, specific project. Annual contracts may be extended or renewed for two subsequent annual terms at a maximum of \$6 million over the subsequent terms. Contract values must be adjusted annually to reflect the percentage change in the California CPI.

SB 128 (Beall) added the Counties of Monterey and Santa Clara to the authorization and extended the sunset date from January 1, 2020, to January 1, 2025.

- 7) **Arguments in Support.** Jobs to Move America, the sponsors of this bill, writes, “The current system of awarding public contracts to the lowest responsible bidder inherently rewards bad actors. When contractors are selected based on price and quality alone, they are incentivized to cut labor costs to offer more competitive bids. Best value procurement allows agencies to select bidders that will not only provide needed goods and services, but will also provide good jobs and benefits to the public.

“State and local agencies currently face a confusing patchwork of best value procurement authorization within state code. Some agencies have explicit permission to utilize best value procurement while others do not, and some have authorization, but only under specific circumstances. This patchwork makes it difficult for agencies to understand if they have authority to adopt best value procurement models.

“SB 1325 creates authorizing statutes for best value procurement so that cities, states, and public agencies can use public dollars to maximize benefits for the public, advance equity and environmental goals, and ensure the creation of good jobs that build the middle class.”

- 8) **Arguments in Opposition.** None on file.
- 9) **Related Legislation.** AB 1957 (Wilson) expands a pilot program for specified counties to use best value contracting to include all counties, and extends the sunset date on the

authorization to January 1, 2030. This bill passed through both houses and is currently ordered to engrossing and enrolling.

- 10) **Previous Legislation.** AB 1983 (Fong, 2022) would have reinstated the best value procurement for the purchase of heavy fleet vehicles and special equipment for CalTrans by DGS, as specified. This bill was vetoed by Governor Newsom.

AB 271 (Robert Rivas), Chapter 48, Statutes of 2021, allows the Santa Clara Valley Water District to award contracts on a best value basis for any construction work to improve the safety of the Leroy Anderson and Reservoir.

AB 1981 (Nazarian), Chapter 46, Statutes of 2020, extended the authority of the Los Angeles Unified School District to use the best value procurement method by five years, from January 1, 2021, to January 1, 2026.

AB 3186 (Medina), Chapter 725, Statutes of 2018 authorizes the University of California and the California Community Colleges to continue using best value contracting for the procurement of certain goods and services by eliminating the January 1, 2019, repeal date of the program pilot and removing relating reporting requirements.

SB 785 (Wolk), Chapter 931, Statutes of 2014, authorizes, until January 1, 2025, DGS, and specified local agencies to use design-build for their public works contracts in excess of \$1 million, as specified.

AB 1857 (Frazier), Chapter 381, Statutes of 2014, created the best value procurement program and authorized DGS to test the effectiveness of the program method when purchasing heavy fleet vehicles and special equipment for Caltrans.

REGISTERED SUPPORT / OPPOSITION:

Support

Jobs to Move America (SPONSOR)
California Environmental Voters (formerly Clcv)
California Labor Federation, Afl-cio
Natural Resources Defense Council (NRDC)
Water Replenishment District of Southern California

Support if Amended

Los Angeles Unified School District

Opposition

None on file.

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