

Date of Hearing: July 3, 2019

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

SB 128 (Beall) – As Amended June 19, 2019

SENATE VOTE: Vote not relevant

SUBJECT: Public contracts: Best Value Construction Contracting for Counties Pilot Program.

SUMMARY: Expands and extends a pilot program allowing specified counties to utilize best value contracting. Specifically, **this bill:**

- 1) Adds the County of Santa Clara to a pilot program allowing the counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, San Mateo, Solano, and Yuba to utilize the best value method for construction projects in excess of \$1 million dollars and for job order contracting.
- 2) Extends the sunset date on this pilot program from January 1, 2020, to January 1, 2025.
- 3) 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 unique circumstances relating to construction projects in the counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, San Mateo, Santa Clara, Solano, and Yuba.

FISCAL EFFECT: This bill is keyed fiscal and contains a state mandated local program.

COMMENTS:

- 1) **Bill Summary and Author's Statement.** This bill adds the County of Santa Clara to a pilot program allowing the counties of Alameda, Los Angeles, Riverside, San Bernardino, San Diego, San Mateo, Solano, and Yuba to utilize the best value method for construction projects in excess of \$1 million dollars and for job order contracting. This bill also extends the sunset date on this pilot program from January 1, 2020, to January 1, 2025. This bill is sponsored by the Solano County Board of Supervisors.

According to the author, "This bill builds upon prior legislation and will allow more counties to use the best value construction contracting program. This program creates a much larger and stronger contractor bidding pool, reduces bad actors during the contractor selection process and increases the percentage of skilled craftworkers on county construction projects. Furthermore, we can expect reduced administrative cost and time by increasing contract terms through renewal options and ultimately increases capacity to achieve more projects in less time."

- 2) **Background.** 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. Best value contracting has generally been recognized as a viable alternative for construction projects. Traditionally,

construction projects have been bid out and awarded based upon a lowest-cost approach. Best value, a competitive contracting process, allows projects to be awarded to the contractor offering the best combination of price and qualifications, instead of just the lowest bid. In addition to submitting bids for project cost, prospective contractors also submit technical proposals. The technical proposals are evaluated based on objective criteria, and scores are compiled. The scores are then used to weigh or adjust the submitted bid price. The contract is awarded to the contractor that represents the best value to the contracting agency.

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; and,
- k) Submitting a report to the Legislature, including information about the county's use of the bill's authority, before the pilot program sunsets on January 1, 2020.

- 3) **First Expansion of the Pilot.** 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; and,
 - 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.
- 4) **How is the Pilot Progressing?** According to the Solano County Board of Supervisors, sponsor of this bill, “Solano County has benefited from the authority provided under SB 762 with the recent delivery and completion of the Rourk Vocational Training Center in Fairfield, a detention-grade re-entry facility constructed for the Solano County Sheriff to provide vocational training to jail inmates. The 46,000 square foot, \$26M inmate vocational training center was funded with SB 1022 Adult Local Criminal Justice Facilities Construction Program funding authorized on June 27, 2012 as part of the FY2012/13 State budget.
- “This pilot Best Value delivery opportunity attracted five well-qualified contractors to submit Best Value proposals (bids) to Solano County, competing on the basis of published Best Value criteria. Hensel Phelps Construction Company was awarded the construction contract on the overall strength of their proposal, representing best value to the County. Hensel Phelps worked in a professional and diligent manner to effectively deliver the project despite certain unforeseen challenges that arose in the course of construction. It is unlikely that the process of constructing this detention-grade project would have gone as well, or delivered equivalent value, by way of a more traditional low-bid contract award process. Solano County is in the final stages of completion of the project and is slated to approve the ‘Notice of Completion’ at their June 25, 2019 Board of Supervisors meeting. Solano County will also submit the required report to the Legislature on or before the January 1, 2020 report deadline.”
- While Solano County is the only county to have used the best value pilot, other counties indicate plans to use it in the near future and/or a desire to retain the authority as an option going forward.
- 5) **Committee Amendments.** This bill extends the sunset date on the best value pilot program for the specified counties, but does not update the reporting requirements. The Committee may wish to amend the bill to update the reporting requirement to March 1, 2024, to allow the Legislature adequate opportunity to review the pilot program before any additional changes are made to its sunset date or other provisions.
- 6) **Arguments in Support.** The Solano County Board of Supervisors, sponsor of this bill, writes, “A ‘best value’ construction contract is one that allows counties to select the lowest

responsible bidder on the basis of a number of measurable, verifiable criteria. These criteria include management competency, financial condition, labor compliance, qualifications, experience, and safety record. Factoring in these criteria will allow counties that participate in the pilot program to choose contractors that provide the best combination of price and quality.”

7) **Arguments in Opposition.** None on file.

REGISTERED SUPPORT / OPPOSITION:

Support

Solano County Board of Supervisors [SPONSOR]
Counties of San Bernardino, San Diego, San Mateo, and Santa Clara
State Building and Construction Trades Council

Opposition

None on file

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