

Date of Hearing: April 18, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 618 (Low) – As Amended March 29, 2017

SUBJECT: Local Agency Public Construction Act: job order contracting: community college districts

SUMMARY: Authorizes job order contracting (JOC) for community college districts, in a manner similar to that authorized by existing law for school districts, until January 1, 2022. Specifically, **this bill:**

- 1) Specifies that the provisions in this bill only apply to community college districts that choose to utilize JOC. Authorizes a community college district to utilize JOC, when permitted by this bill, as an alternative to any contracting procedures that the community college district is otherwise authorized or required by law to use.
- 2) Authorizes a community college to utilize JOC only if the community college district has entered into a project labor agreement (PLA) or agreements that will apply to all public works that exceed a monetary threshold set by the community college district through at least December 31, 2021, regardless of what contracting procedure is used to award that work.
- 3) Requires the community college district to prepare an execution plan for all modernization projects that may be eligible for JOC. Requires the community college district to select from that plan a sufficient number of projects to be initiated as JOC during each calendar year and to determine for each selected project that JOC will reduce the total cost of that project. Prohibits JOC from being used if the community college district finds that it will increase the total cost of the project.
- 4) Makes conforming changes to Section 20919.23 of the Public Contract Code, removing the \$25,000 dollar minimum threshold for JOC projects and creating a parallel local approval process to that proposed for community college districts

Findings and declarations:

- 5) Makes the following findings and declarations:
 - a) It is the intent of the Legislature to demonstrate an alternative and optional procedure for bidding of public works projects that is applicable only to community college districts. The Legislature has previously authorized the use of this alternative and optional procedure only for school districts.
 - b) Districts should be able to utilize cost-effective options for the delivery of public works projects to allow public entities to utilize job order contracts as a project delivery method.

- c) The benefits of a job order contract project delivery system include accelerated completion of the projects, cost savings, and reduction of construction contracting complexity for the district.
- d) The job order contracting approach should be used for the purposes of reducing project cost and expediting project completion.
- e) The availability of job order contracting as a project delivery method will not preclude the use of traditional methods of project delivery if a traditional method results in higher cost savings.
- f) It is the intent of the Legislature that job order contracts be competitively bid and awarded to the bidders providing the most qualified responsive bids. It is further the intent of the Legislature that districts use the job order contract process pursuant to this article only if the district has entered into a project labor agreement that meets the requirements of Section 2500 for all its public works projects.

Definitions:

- 6) Establishes the following definitions:
 - a) "Adjustment factor" means the job order contractor's competitively bid adjustment to the community college district's prices as published in the unit price catalog.
 - b) "Indefinite quantity" means one or more of the construction tasks listed in the unit price catalog.
 - c) "Job order" means a firm, fixed priced, lump-sum order issued by the community college district to a job order contractor for a definite project scope of work as compiled from the unit price catalog to be performed pursuant to a job order contract.
 - d) "Job order contract" means a contract, awarded to the most qualified bidder, between the community college district and a licensed, bonded, and general liability insured contractor in which the contractor agrees to a fixed period, fixed-unit price, and indefinite quantity contract that provides for the use of job orders for public works or maintenance projects.
 - e) "Job order contract technical specifications" means a book, published by the community college district, detailing the technical specifications with regard to quality of materials and workmanship to be used by the job order contractor in accomplishing the tasks listed in the unit price catalog.
 - f) "Job order contractor" means a licensed, bonded, and general liability insured contractor awarded a job order contract.
 - g) "Offer to perform work" means the job order contractor's proposal for a specific job order.

- h) "Plans and specifications" means the unit price catalog and the job order contract technical specifications. The scope of work to be performed with a job order contract is potentially, but not necessarily, all the tasks published in the unit price catalog.
- i) "Project" means the specific requirements and work to be accomplished by the job order contractor in connection with an individual job order.
- j) "Project labor agreement" (PLA) means an agreement that meets the requirements of Public Contract Code (PCC) Section 2500.
- k) "Project scope of work" means the document and related drawings, specifications, and writings referenced therein which together set forth the specific requirements and work to be accomplished by the job order contractor in connection with an individual job order.
- l) "Proposal" means the job order contractor prepared document quoting those construction tasks listed in the unit price catalog that the job order contractor requires to complete the project scope of work, together with the appropriate quantities of each task. The pricing of each task shall be accomplished by multiplying the construction task unit price by the proposed quantity and the contractor's competitively bid adjustment factor. The proposal shall also contain a schedule for the completion of a specific project scope of work as requested by the community college district. The proposal may also contain approved drawings, work schedule, permits, or other documentation as the community college district may require for a specific job order.
- m) "Public works" has the same meaning as in Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.
- n) "Public works project" has the same meaning as "public project," as defined in PCC Section 22002.
- o) "Subcontractor" means any person, firm, or corporation, other than the employees of the job order contractor, who is bonded and general liability insured and who contracts to furnish labor, or labor and materials, at the worksite or in connection with a job order, whether directly or indirectly on behalf of the job order contractor.
- p) "Community college district" means any school district.
- q) "Unit price catalog" means a book containing specific construction tasks and the unit prices to install or demolish that construction. The listed tasks shall be based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. The prices shall include the cost of materials, labor, and equipment for performing the items of work. The prices shall not include overhead and profit. All unit prices shall be developed using local prevailing wages.

Process for bidding JOCs:

- 7) Establishes a process for bidding JOCs as follows:

- a) The community college district shall prepare a set of documents for job order contracts. The documents shall include a unit price catalog and pre-established unit prices, job order contract technical specifications, and any other information deemed necessary to describe adequately the community college district's needs. Any architect, engineer, or consultant retained by the community college district to assist in the development of the job order contract documents shall not be eligible to participate in the preparation of a bid with any job order contractor.
- b) Based on the documents prepared, the community college district shall prepare a request for bid that invites prequalified job order contractors to submit competitive sealed bids in the manner prescribed by the community college district.
- c) The prequalified job order contractors, as determined by the community college district, shall bid one or more adjustment factors to the unit prices listed in the unit price catalog based on the job order contract technical specifications. Awards shall be made to the prequalified bidders that the community college district determines to be the most qualified based upon pre-established criteria made by the community college district. The prequalified bidder must be in compliance with the community college district's project labor agreement.
 - i) Compliance shall constitute no more than three major violations on any community college district projects within the last three years. If a contractor has more than three violations within a three-year period of time, the community college district shall seek administrative review of the violations. Violations will include, but are not limited to, failure to register core workers with the appropriate building trade union, failure to assign apprentices in accordance with the Labor Code, failure to comply with the requirement to provide a minimum of seven days of notice for the addition of any subcontractor or substitution of subcontractor, and incorrect assignment of work in accordance with the community college district's project labor agreement.
- d) The community college district may award multiple job order contracts through a request for bid. JOCs shall be awarded to the most qualified prequalified bidders.
- e) The request for bids may encourage the participation of local construction firms and the use of local subcontractors.

Prequalification:

- 8) Requires the community college district to establish a procedure to prequalify job order contractors using a standard questionnaire that includes, at a minimum, the issues covered by the standardized questionnaire and model guidelines for rating bidders developed by the Department of Industrial Relations (DIR). This questionnaire shall require information including, but not limited to, the following: a) a listing of all partners; b) evidence of ability to complete the project of similar size, scope or complexity; c) licenses, bonds and insurance; d) information regarding workers; compensation history, safety and apprenticeship programs; and e) full disclosure of past violations, disciplinary actions, and lawsuits. Requires all information to be verified under oath.

Length and amount of contracts:

- 9) Specifies that the maximum total dollar amount that may be awarded under a single job order contract shall not exceed \$5 million in the first term of the contract or a maximum of \$10 million if the contract is extended or renewed for the second and final term.
- 10) Specifies that the initial JOC contract may be no more than 12 months, with the option of extending or renewing the JOC for two 12-month periods. The extension or renewal shall be mutually agreed to by the community college district and the job order contractor.
- 11) Provides that the community college district may issue job orders to the job order contractor that has been awarded the JOC. Prohibits the job order from commencing for seven days from the time the job order was issued. Requires the job order contractor to provide a minimum of seven days' notice for the addition of any subcontractor or substitution of any subcontractor. Limits single job orders to no more than \$1 million. Prohibits splitting or separating a project into smaller job orders to evade the cost limitations, and requires all work performed under the JOC to be covered by a project labor agreement.
- 12) Requires the dollar limits to be adjusted on January 1, 2018, as if the limits were operative beginning January 1, 2004, to reflect the percentage change in the California Consumer Price Index (CPI), and requires the adjustment to be made each January 1 thereafter to reflect the percentage change in the CPI.

Subletting and subcontracting:

- 13) Requires all work bid under the job order to comply with existing law under the Subletting and Subcontracting Fair Practices Act.
- 14) Requires the primary job order contractor to verify that the subcontractors possess the appropriate licenses and credentials.
- 15) Authorizes the primary job order contractor to use subcontractors that are not listed at the time the job order is issued if the work to be performed is less than \$10,000 and requires the job order contractor to comply with the following:
 - a) Provide public notice of the availability of work to be subcontracted by trade. The public notice shall provide information regarding the job, including the scope of work, the project location, information regarding the primary job order contractor, and the closing date, time and location for sealed bids to be submitted.
 - b) Take sealed bids from the subcontractors and publicly open the bids at a prescribed time and place. Notify the community college district which subcontractor was selected.

- i) Requires the notification to include every subcontractor for all tiers and identify the scope of work to be performed by each subcontractor to the job order, broken down by craft.
 - ii) Requires the primary job order contractor to provide a minimum of seven days' notice to the community college district of any substitution along with the justification as to the need for the substitution. Authorizes the community college district to request a hearing to evaluate the substitution request.
- 16) Authorizes a community college district to terminate the job order, declare the contractor ineligible for future job orders and rescind prequalification status if the district determines that a violation of the Subletting and Subcontracting Fair Practices Act has occurred, including bid shopping by the primary job contractor.

Labor provisions:

- 17) Requires a JOC to set forth the party or parties responsible for labor compliance.
- 18) Requires the job order contractor to pay the prevailing wage in effect at the time the job order is issued by the community college district and all increases as published by the DIR for the term of the JOC, including all overtime, holiday, and shift provisions.
- 19) Requires the community college district to designate one individual to act as a monitor to inspect job sites for labor compliance violations.
- 20) Specifies that a willful violation of the Subletting and Subcontracting Fair Practices Act occurs when the job order contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails to comply. Requires community college districts to publish and distribute to the Labor Commissioner a list of all job order contractors or subcontractors who committed violations and prohibits the community college district from awarding a JOC or future job orders.
- 21) Provides that when the job order is more than \$30,000 or 20 working days, all general contractor or subcontractors must comply with the Labor Code relating to apprentices. Requires the job order contractor to notify apprenticeship programs that can supply apprentices to the site of the job order, specifies apprentice to journeyman ratios, payment of prevailing wage, and requires every apprentice to be hired from the local joint labor management apprenticeship committee that has jurisdiction in the geographic area of the project.
- a) Imposes a civil penalty of \$100 for each full calendar day of noncompliance with specified apprentice employment provisions. A job order contractor or subcontractor shall be imposed a \$300 per day penalty for a second or subsequent violation, and shall not be awarded any further job orders under the JOC or be allowed to bid on any future JOCs for one year.

Fraud, waste, and abuse prevention:

- 22) Requires community college districts to do all of the following to prevent fraud, waste and abuse:
- a) Prepare an independent cost estimate for all job orders under a JOC. If a contractor's proposal is found to be unreasonable, not cost effective, or undesirable, the community college district is not obligated to issue the job order to the job order contractor and may utilize other procurement procedures.
 - b) Have the job order reviewed and approved by the appropriate level of management.
 - c) Make all documents pertaining to the approval of the job order available for public review.

K-12 conforming changes:

- 23) Authorizes a school district to utilize JOC only if the district has entered into a PLA or agreements that will apply to all public works that exceed a monetary threshold set by the school district through at least December 31, 2021, regardless of what contracting procedure is used to award that work.

Miscellaneous:

- 24) Authorizes a community college district that adopts the JOC process to adopt a payment resolution process which may include, but not be limited to, the convening of a payment resolution committee.
- 25) Sunsets on January 1, 2022, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

EXISTING LAW:

- 1) Authorizes job order contracting for school districts until January 1, 2022. (PCC § 20919.20 et seq.)
- 2) The act restricts job order contracting to school districts that have entered into PLA or agreements that will apply to all public works in excess of \$25,000 undertaken by the school, undertaken by the school district through at least December 31, 2021, regardless of what contracting procedure is used to award that work. (PCC § 20919.23)
- 3) The act requires job order contractors to submit a questionnaire to the school district containing specified information verified under oath. (PCC § 20919.24 et seq.)

FISCAL EFFECT: Unknown

COMMENTS: *Need for the bill.* According to the author, current construction options available to community college districts, such as “design-bid-build”, may not be the most efficient or cost-effective for smaller projects procured by community colleges. AB 618 is intended to provide community college districts with PLAs JOC authorization identical to one that K-12 school

districts were granted in 2015 as an alternative method to deliver smaller projects while protecting the integrity of the bidding process and adherence to labor law.

Job order contracting. JOC is a contracting procedure that allows for the awarding of contracts based on prices for specific construction tasks rather than bids for a specific project. A catalog or book identifies all work that could be performed (typically maintenance or modernization projects) and the unit prices for each of those tasks. The tasks are based on accepted industry standards and prices include the cost of materials, labor, and equipment for performing the work, but exclude overhead and profit. A contractor, who has been prequalified, rather than bid a total price for the project, will bid an adjustment factor, which reflects specified costs, to the pre-set unit prices.

Selection of the contractors is based on the lowest responsible bidder. JOC is intended to reduce costs and accelerate completion of smaller projects; it is not generally viewed as an appropriate method of contracting for large, complex construction projects that require extensive or innovative design or are likely to encounter changes and revisions during constructions.

LAUSD experience. In 2003, AB 14 (Horton) authorized a JOC pilot program at Los Angeles Unified School District (LAUSD) from January 1, 2004 until December 1, 2007. In subsequent extensions of the pilot program, procedures were established to review and penalize violations of the program, required notifications of the scope of work to ensure the appropriate workers and apprentices were utilized, and required reports to the Legislature. This program has allowed for local workers and contractors to accomplish over 3,300 job orders totaling more than \$300 million from 2005-2012.

In the LAUSD pilot program's report to the Legislature, project costs were approximately 9.3% lower than the estimates. The report also stated that JOC reduced the total procurement time by more than half. Due to the success of the LAUSD pilot, AB 1431 (Gomez, 2015) authorized all school districts that have entered into a PLA to utilize JOC.

Conforming changes to K-12 provisions. This measure makes conforming changes to the provisions for school districts that use JOC. To be noted, this analysis did not review what, if any, effects this would have for those districts, as it is out of the jurisdiction of this committee.

Arguments in support. The State Building and Construction Trades Council of California, the sponsor of AB 618, writes that "AB 618 will improve the cost effectiveness and efficiency of smaller construction tasks at community colleges without forgoing quality, the integrity of the bidding process, and compliance with labor laws. The bill also provides more flexibility to school and community college governing boards by removing the threshold amount for the PLA so that an amount that is more suitable to local needs can be applied upon agreement."

The sponsor adds that, "PLAs are carefully negotiated agreements used in the private and public sector that help provide career opportunities to residents of economically depressed areas, veterans, women, emancipated youth from the foster care system, and other targeted groups. These agreements are crafted to meet a community's particular needs, and remain an invaluable tool for creating local jobs, encouraging fair and open competition, and maximizing taxpayer dollar on public works projects."

Arguments in opposition. Opposition from Merit Shop contractor associations argue that, “Job Order Contracting (JOC) is intended to simplify the contracting process for simple, ‘routine’ construction and maintenance projects; conversely proponents of Project Labor Agreements (PLA) cite their value for complex and large construction projects with multiple construction trades. PLAs cost school districts to administer and reduce competition – meaning PLAs produce less construction for each tax dollar. AB 618 discriminates against many State-approved apprenticeship programs in conflict with PCC§2500 and CCR§230.1. AB 618 requires Community College districts that wish to execute even one JOC contract to negotiate and execute a PLA that lasts not less than five years which would apply to every construction project by the district ‘regardless of what contracting procedure is used to award that work.’...The complexity and costs associated with the PLA mandate in AB 618 is the exact opposite of the goals of JOC.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Labor Federation
California State Association of of Electrical Workers
California State Pipe trades Council
District Council 16 Painters and Allied Trades
Foothill-DeAnza Community College District
Gordian Group
International Union of Elevator Constructors
Los Angeles Community College District
Peralta Community College District
San Francisco Community College District
State Building and Construction Trades Council of California (Sponsor)
Western States Council of Sheet Metal Workers

Opposition

Associated Builders and Contractors – San Diego Chapter
American Fire Sprinkler Association
Independent Roofing Contractors of California, Inc
Plumbing-Heating-Cooling Contractors Association of California
Western Electrical Contractors Association

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