

Date of Hearing: July 7, 2015

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 376 (Lara) – As Amended June 29, 2015

[Note: This bill is double referred to the Assembly Accountability and Administrative Review Committee and will be heard as it relates to issues under its jurisdiction.]

SENATE VOTE: 24-14

SUBJECT: Public contracts: University of California

SUMMARY: Modifies the requirements for qualifying as a lowest responsible bidder or best value awardee for contracts for materials, goods, and services at the University of California (UC). Specifically, **this bill:**

- 1) Makes findings and declarations that the UC has squandered public resources via contracting out to for-profit private contractors that charge significant administrative overhead.
- 2) Requires a bidder to certify in writing to the UC that the bid includes a total employee compensation package, including fringe benefits, that is valued at a basis that does not materially undercut the average per-employee value of total compensation for employees at the UC who perform comparable work at the relevant campus, medical center, or laboratory, where the proposed work will be performed.
- 3) Specifies that the aforementioned requirements apply specifically to contracts for building maintenance, cleaning, or custodial services, call center services, clerical services, dining and food services, gardening, grounds keeping and plant nursery services, laborer services, mailroom services, parking, shuttle bus, truck driving, or transportation services, security services, storekeeper services, patient care technical employee services, patient billing services, medical transcribing services, patient escort services, or nursing assistant services.
- 4) Exempts the application of said requirements to employees who are mentally or physically handicapped, or both, who have been issued a license for employment for employment at less than minimum wage by the Industrial Welfare Commission; and, exempts public works projects conducted by public agencies.
- 5) Requires the UC to: a) include in its request for proposals a calculation which considers the criteria outlined in number two above; and, b) use all known cost escalators in the calculation to project the future rate of growth of average per-employee total compensation costs.
- 6) Eliminates the exception to the \$100,000 threshold for competitive bidding of contracts for personal services.
- 7) Makes the threshold applicable to any renewal or extension of an existing contract if it involves an expenditure of \$100,000 or more annually.
- 8) Makes technical and clarifying changes to existing law.

EXISTING LAW:

- 1) Outlines the requirements and procedures for competitive bidding at the UC; and, outlines requirements and procedures, specifically for the acquisition of materials, goods, and services (Public Contract Code Section 10500, et seq.).
- 2) Declares the intent of the Legislature to facilitate the participation of small businesses, particularly small disadvantaged or minority business enterprises, women business enterprises, and disabled veteran business enterprises in business contracting with the UC (PCC Section 10500.5).
- 3) Requires the UC to let any contract involving an expenditure of \$100,000 or more annually for goods and materials, or for services to be performed (other than personal or professional services) to the lowest responsible bidder (PCC Section 10507.7).
- 4) Authorizes the UC, when it determines that it can expect long-term savings, as specified, to select the lowest responsible bidder on the basis of the best value to the university (PCC Section 10507.8).

FISCAL EFFECT: According to the Senate Appropriations Committee, costs to UC to be below \$66 million. Costs are primarily due to the requirement that bidders certify total compensation packages for their employees and ensuring that they are comparable to those of UC employees. Actual costs are unknown and would depend upon a number of factors, including the impacts the bill would have on future contracting behavior by UC, the number of contracts entered into in the future, and any increases in bid prices to reflect the required compensation parity. Additionally, UC administrative costs of \$350,000 for bid renegotiation.

COMMENTS: *Background.* According to a 2012 UC Berkeley Labor Center report, entitled, "Temporary Workers in California are Twice as Likely as Non-Temps to Live in Poverty: Problems with Temporary and Subcontracted Work in California," in California almost one-quarter of a million people worked in the temporary help services industry in 2010. The report finds that temporary and subcontracted workers on a whole, are more likely to be female, less likely to be white non-Hispanic, and less likely to have a high school diploma or equivalency certificate than the average non-temporary employee.

Additionally, the report finds that temporary and subcontracted employees are twice as likely as non-temporary employees to live in poverty, receive food stamps, and be on Medicaid. The report finds that temporary and subcontracted employees earned roughly 18 percent less than equivalent non-temporary employees of the same age, gender, and ability.

The report also finds that temporary and subcontracted employees were also more susceptible to workplace illness and injury, and were less likely to get benefits. The report notes that lowered wages mean that temporary and subcontracted employees rely more on the state safety net than their direct-hire counterparts and that these employment arrangements undermine worker protections by allowing employers to avoid certain provisions of worker protection; making it difficult to enforce other protections. Lastly, the report finds that these employment relationships create downward pressure on wages.

Need for the measure. According to the author, "SB 376 seeks to address the growing challenge to California of the use of contingent workers to replace employees, and the consequential effect it has on wages and worker protections." The author contends that this measure will ensure that the UC evaluates the total employee compensation package of bids for contract work in order to ensure that employment that is contracted out to contingent workers does not, "undercut the value of existing university employees."

Current UC practices for contracting out. According to the UC, Article 5 of its contract with employees represented by American Federation of State, County and Municipal Employees (AFSCME), addresses the issue of contracting out. The provisions specifically prohibit the UC from contracting out services solely on the basis that savings will result from lower contractor pay rates and benefits for services customarily performed by bargaining unit employees. The UC is permitted to contract out for special services and equipment unavailable internally, to obtain special expertise or efficiencies better provided through an outside contractor, for short-term temporary staffing needs, financial necessity, and for remote facilities.

The bargaining contract also provides that when the UC contracts for services customarily provided by AFSCME unit employees, it must provide a copy of any request for proposals within 10 business days of issuance, requires the UC to provide all relevant non-confidential written information used in the making of the contracting out decision, requires accommodation of any meeting request by AFSCME, and establishes a complaint process through the Office of the President, Office of Labor Relations. The Office of the President is required to make the final determination whether conditions were met and the decision is not grievable or arbitrable.

To note, the contract also requires that, for bargaining unit employees laid off or released because of a contract, the UC make available another bargaining unit position for which the employee is qualified at the same location.

Arguments in support. According to the California Labor Federation, the UC continues to contribute to the problem of regularly relying on a "subcontracted worker model, risking the jobs and putting downward pressure on wages of direct hire employees." The Labor Federation contends that, "SB 376 implements improved standards to pay its subcontracted employees at a level that does not undercut the wages of comparable regular UC employees in order for that bidder to qualify as a 'lowest responsible bidder' or best value awardee.'"

Arguments in opposition. According to the UC, the system has a number of policies, guidelines, and collective bargaining agreements in place to minimize the impact contracting for services could have on current employees. The UC states that, "SB 376 may limit the ability of the UC to contract for unique, specialized services, and could limit the types of cultural services it offers to the communities in which campuses are located. The UC contends that this measure would increase the number of competitive bids that the UC would have to administer by eliminating the ability to extend or renew an existing contract for services.

Committee consideration. Committee staff understands that presently, the California State University System (CSU) follows a similar process to that of the UC. The Committee may wish to consider if the provisions of this measure should also be made applicable to the CSU.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal Employees, AFL-CIO
California Labor Federation
California Teamsters Public Affairs Council
Central Labor Council of Contra Costa County, AFL-CIO

Opposition

University of California

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