

Date of Hearing: July 11, 2017

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 574 (Lara) – As Introduced February 17, 2017

SENATE VOTE: 26-13

SUBJECT: University of California: contracts: bidding

SUMMARY: Modifies the requirements to qualify as a lowest responsible bidder or best value awardee for certain types of contracts at the University of California. Specifically, **this bill:**

- 1) Requires a bidder to certify in writing that its employees are compensated at a level that does not undercut, by more than five percent, the average per-employee value of total compensation for UC employees who perform comparable work at a campus, medical center, or laboratory.
- 2) Applies to contracts for building maintenance, cleaning or custodial services, call center services, dining and food services, gardening, grounds keeping and plant nursery services, laborer services, mailroom services, parking, shuttle bus, transportation services, security services, storekeeper services, truck driving services, patient care technical employee services, patient billing services, medical transcribing services, patient escort services, and nursing assistant services.
- 3) Makes the \$100,000 threshold for competitive bidding of contracts for goods, materials and services to be performed applicable to any renewal or extension of an existing contract if it involves an expenditure of \$100,000 or more annually.
- 4) Requires UC to include in its request for proposals a calculation of the average per-employee value of total compensation for employees who perform comparable work at the relevant campus, medical center or laboratory, and specifies that the calculation uses known cost escalators to project future compensation amounts.
- 5) Requires a bidder to certify in writing that it has not been found liable for violations of compensation, work hours, or working conditions related to provisions of the Penal Code, or Labor Code, as specified, or any wage order issued by the Industrial Welfare Commission (IWC) for specified amounts, within the prior five years.
- 6) Makes the records provided by the bidder or contractor subject to public records act laws, as specified and authorizes the UC to redact any confidential information, and to delay response until after a bid process is complete, if applicable.
- 7) Exempts the application of these requirements to employees who are mentally or physically handicapped, or both, who have been issued a license for employment at less than minimum wage by the IWC.
- 8) Exempts public works projects conducted by public agencies from these requirements.

- 9) Becomes operative on January 1, 2019.

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 (PCC) 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:

- 1) UC estimates this measure will increase total annual costs by \$88 million. These costs will come from a variety of UC fund sources, including the General Fund, federal funds, auxiliary funds, and enterprise funds, such as funds from the medical centers.
- 2) UC also estimates costs of \$500,000 - \$700,000 to comply with the bill's administrative requirements.

COMMENTS: *Purpose of this measure.* According to the author, "Between 2009 and 2014, job growth in contingent or contract employment has grown at more than nine times the rate of traditional employment, according to the Bureau of Labor Statistics. This trend has been especially evident at the University of California—the state's third largest employer—where, despite dramatic growth in both students and facilities, the number of directly employed service workers has actually declined during this period."

The author contends that this measure will ensure that the UC "evaluates the total employee compensation package of bids for contract work to ensure that employment that is contracted out to contingent workers does not undercut the value of existing university employees."

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

UC's Fair Wage/Fair Work plan. In July 2015, the UC adopted a Fair Wage/Fair Work Plan. Under the Plan, the UC has established a minimum level of pay for employees to ensure that all UC workers are provided a fair wage with a goal of reaching a minimum wage of \$15 per hour on October 1, 2017. In addition, the UC reports that it is implementing annual compensation audits and interim audits, paid for by the contractor, to monitor wage and working conditions as well as compliance with federal, state, and UC workplace laws and policies for contracted employees working pursuant to contracts entered into or renewed after October 2015.

Joint Legislative Audit Committee (JLAC) actions. During the May 25, 2016 JLAC hearing, the Committee approved an audit request by Senator Ricardo Lara to, among others, have the California State Auditor conduct an audit of UC contracting policies and processes and comparisons of compensation and benefits of UC employees versus contract employees. According to the author, the State Auditor estimates that said audit will require approximately 3,240 hours of audit work, and be completed in August, 2017. Upon completion of the audit, a report will be issued that presumably will have policy recommendations.

Committee consideration. Knowing that an audit will be conducted as it pertains directly to the subject and contents of this measure, the Committee may wish to determine if it is prudent for this measure to be acted upon prior to the release of the audit findings.

Arguments in support. The American Federation of State, County and Municipal Employees, AFL-CIO, contends that, "If enacted, this bill would help to stem the troubling and growing trend of depressed wages and labor abuse among contracted out workers, by requiring California's third-largest employer, the University of California, to hold contract labor firms accountable around compensation and treatment of workers."

Arguments in opposition. The UC contends that the UC's contract partners will be greatly impacted by this measure due to the prescriptive reporting requirements. Additionally, the UC states, "...SB 574 significantly undermines the University's ability to achieve administrative cost savings that could be directed to the University's core missions of teaching, research, and public service. Therefore, while we appreciate and embrace the intention of the bill, as seen through our proactive efforts to improve the wages and employee protections available to contacted workers, we must continue to steadfastly oppose this measure and the outcomes it would create."

Related legislation. SB 959 (Lara), of 2016, which was vetoed by the Governor, is very similar in nature to this measure.

SB 376 (Lara), of 2015, which was vetoed by the Governor, is very similar in nature to this measure.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation of State, County and Municipal employees, AFL-CIO
California Employment Lawyers Association
California Immigrant Policy Center
Jobs with Justice San Francisco
Los Angeles Alliance for a New Economy
Orange County Communities Organized for Responsible Development
Tenants Together
United Automobile Workers, Local 2864

Opposition

California Chamber of Commerce
University of California
USCB, America, Inc.

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