

Date of Hearing: June 21, 2016

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 959 (Lara) – As Amended May 31, 2016

[Note: This bill is doubled 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: University of California: contracts: bidding.

SUMMARY: Modifies the requirements for qualifying as a lowest responsible bidder or best value awardee for contracts for specified types of service contracts at the University of California (UC) by requiring 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, as specified; and, beginning January 1, 2018, makes these provisions applicable to any renewal or extension of an existing contract for goods, materials and services involving an expenditure of \$100,000 or more annually. 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) Establishes a number of new requirements for bidders, including:
 - a) 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 per-employee basis that does not undercut, by more than five percent, 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;
 - b) Applies these requirements specifically 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, 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;
 - c) 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 Industrial Welfare Commission; and,
 - d) Exempts public works projects conducted by public agencies from these requirements.
- 3) Requires the UC to:
 - a) Include in its request for proposals a calculation which considers the criteria as specified in number 1) 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.
- 4) Requires a bidder to certify in writing that the bidder has not been found liable for violation of compensation, work hours, or working conditions related provisions of the Penal Code, or Labor Code, as specified, or any Wage Order Issued by the Industrial Welfare Commission for specified amounts, within the prior five years.
- 5) Requires the bidder to provide the following to the UC:
 - a) Spreadsheets showing all applicable compensation and benefits, as specified, for each position and employee supplied to the University;
 - b) An organization chart showing the bidder's supervisory structure; and,
 - c) Any applicable collective bargaining agreements and all employee handbooks applicable to the contracted employees.
- 6) Requires a successful bidder, once commencing work for the UC, to:
 - a) Notify the UC of any changes to the information provided within 30 days of the change, as specified; and,
 - b) Provide UC copies of notices provided to employees in compliance with existing labor code provisions outlining the obligations of the employer prior to the employees beginning UC campus work.
- 7) Declares the records provided by the bidder/contractor to be subject to public records act laws, as specified and authorizes the UC to redact any confidential information, as specified, and to delay response until after a bid process is complete, if applicable.
- 8) Makes, beginning January 1, 2018, 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.

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, the UC estimates that this bill would increase contract costs at each campus and medical center resulting in costs in the high tens of millions due to its requirements that would likely drive increased salary and benefit costs for bidders to demonstrate that employees are compensated at a level not less than five percent of those employed by the UC who perform comparable work. Costs that would have more of a direct state cost pressure would likely be impacts to campus contracts, which comprise slightly more than half of this cost estimate (about \$47 million). However, these costs are likely to be comprised of a variety of fund sources outside of UC's core budget. Actual costs are unknown and would depend upon a number of factors, among them being, vendor employee compensation data as well as similar detailed data pertaining to UC employees to determine the difference in total compensation for UC employees for similar work.

Additionally, the UC also estimates significant administrative costs that are unknown, to comply with the bill's requirements for activities that could fluctuate from year to year, but could be in the hundreds of thousands.

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.

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.

The State Auditor estimates that said audit will require approximately 3,240 hours of audit work. 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 959 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."

Related legislation. 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 Labor Federation
California Teamsters Public Affairs Council

Opposition

Association of California Cities – Orange County
California Chamber of Commerce
Chambers of Commerce Alliance, Ventura and Santa Barbara Counties
Orange County Business Council
University of California
USCB, America, Inc.

Analysis Prepared by: Jeanice Warden / HIGHER ED. / (916) 319-3960