

Date of Hearing: April 8, 2021

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 846 (Low) – As Introduced February 17, 2021

SUBJECT: Local Agency Public Construction Act: job order contracting

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, 2027. Specifically, **this bill:**

- 1) Specifies that both a community college district and a school district may utilize JOC pursuant to this article only if the community college district has entered into a project labor agreement (PLA) or agreements that will apply to all public works awarded through JOC and to all other public works of the community college district or school district that exceed a monetary threshold set by the community college district through at least January 1, 2027, regardless of what contracting procedure is used to award that work.
- 2) Requires that an entity awarded a JOC in excess of twenty-five thousand dollars (\$25,000) must provide an enforceable commitment to the community college district or school district that the entity and its subcontractors at every tier will use a skilled and trained workforce to perform all work on the JOC that falls within an apprenticeable occupation in the building and construction trades.
- 3) Specifies that 2) above will not apply if the JOC is subject to a PLA that will bind all contractors and subcontractors performing work on the JOC to use a skilled and trained workforce to perform the JOC.

EXISTING LAW:

- 1) Authorizes JOC for school districts until January 1, 2022. (Public Contract Code (PCC) Section 20919.20 et seq.)
- 2) Authorizes JOC for community college districts until January 1, 2022. (PCC Section 20665.20 et seq.)
- 3) Restricts JOC to school districts that have entered into project labor agreement(s) (PLA) that will apply to all public works awarded through JOC and to all other public works of the school district 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. (PCC Section 20919.23)
- 4) Restricts JOC to community college districts that have entered into PLA(s) that will apply to all public works awarded through JOC and to all other public works of the community college district 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. (PCC Section 20665.23)

- 5) Requires JOC contractors to submit a questionnaire to the school district containing specified information verified under oath. (PCC Section 20919.24 et seq.)
- 6) Requires JOC contractors to submit a questionnaire to the community district containing specified information verified under oath. (PCC Section 20665.24 et seq.)
- 7) Defines skilled and trained workforce to mean a workforce where all the workers performing work in an apprenticeable occupation, as defined, in the building and construction trades are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the chief of the Division of Apprenticeship Standards. (PCC Section 2600, et seq.)

FISCAL EFFECT: Unknown

COMMENTS: *Purpose.* According to the author, “AB 846 authorizes California Community Colleges (CCC) and school districts with Project Labor Agreements and a skilled and trained workforce to utilize a JOC for a catalog of smaller construction projects. Currently, both are able to use JOC and this bill extends the sunset of the two programs. JOC is a project delivery method designed to accelerate the completion of smaller projects at lower costs by streamlining some of the requirements of the contracting process without forgoing quality, the integrity of the bidding process, and compliance with labor laws.”

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.

CCC experience. The UC Berkeley Labor Center released a report in early 2017 about Project Labor Agreements at California Community Colleges. The study found that PLA's do not raise construction project costs for CCC and they do not reduce the number of bids received for the contract. The researchers conducted a quantitative and qualitative study of construction projects at CCC where they compared PLA and non-PLA contracts. The qualitative study determined that PLA and non-PLA projects received a similar number of bidders, but the PLA project bids were lower than non-PLA projects. The quantitative study found no statistical evidence to show that PLA projects received fewer bids than non-PLA projects and that PLA projects raise costs for CCC.

Arguments in support. State Building and Construction Trades Council, the sponsor of AB 846, writes that, "Data on the efficacy of JOC programs continues to be positive. When it was first utilized at the Los Angeles Unified School District (LAUSD) as a pilot program, the District's report to the Legislature stated that JOC 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 and allowed contractors to accomplish over 3,300 job orders totaling more than \$300 million during the length of the original pilot program. JOC is designed to accelerate the completion of smaller projects at lower costs by streamlining some of the requirements of the contracting process. The JOC process allows the public agency to award a competitively bid contract based on a standard set of published construction jobs and unit prices. The smaller jobs involved in JOC have minimal design requirements and are not typically an appropriate method for delivering larger and more complex construction projects...By extending the sunset, AB 846 will allow more school and community college districts to start to use the program so they can take advantage of the cost-effectiveness and efficiency of JOC without forgoing quality, the integrity of the bidding process, and compliance with labor laws."

Arguments in opposition. The Associated General Contractors of California – the California Chapters (AGC) write that, "AGC believes that a PLA requirement for JOC undermines the original spirit of this tool. Designed to be a simple and collaborative delivery method for routine and maintenance projects, JOC enables government to find value in common and repeat renovation, repair and construction projects. While we recognize that the PLA requirements are voluntary for districts, we believe that such a prerequisite in order to use JOC limits tools available to districts. Specifically, we believe that extending this requirement will continue to unduly impact smaller districts. Better said, the value from cost savings of JOC will now be limited to the terms and duration of a PLA. It is for these reasons that we must be opposed to AB 846."

Skilled workforce provisions. AB 846 contains provisions requiring the use of a skilled and trained workforce in those instances where JOC is used and a PLA is not in place.

The skilled and trained workforce statutes were first put in place in 2013 in SB 54 (Hancock) to ensure that construction workers doing work at a refinery are graduates of a state-approved apprenticeship program. This requirement has expanded over recent years and the skilled and trained workforce provisions are now widely used by the state, local governments, local agencies, private housing projects, and industrial refineries when performing work under an alternative delivery method or when the work is complex and requires higher levels of expertise.

The State Building and Trades Council noted that, "...the use of a skilled and trained workforce ensures that these projects will provide work opportunities for the 68,000 apprentices currently

enrolled in state-approved apprenticeship programs and journeypersons even where there is not a PLA. Far too often, public investment in infrastructure fails to generate high-quality local jobs, but both a PLA and the use of a skilled and trained workforce ensures that.”

Committee staff notes that language in AB 846 requiring the use of a skilled and trained workforce is likely redundant, given the requirement that all JOCs in community college and school districts must fall under a PLA in existing law. Committee staff understands that the language is part of a broader effort to codify skilled and workforce requirements in instances where JOCs are in effect.

Prior legislation. AB 618 (Low), Chapter 296, Statutes of 2017, authorized community college districts to enter into JOC, an alternative construction contracting agreement then-available to school districts, until January 1, 2022.

REGISTERED SUPPORT / OPPOSITION:**Support**

The Gordian Group
State Building and Construction Trades Council of California (Sponsor)

Opposition

Associated General Contractors – The California Chapters
Western Electrical Contractors Association

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