

Date of Hearing: April 17, 2018

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2361 (Weber) – As Amended April 9, 2018

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

SUBJECT: University of California: outsource contracts

SUMMARY: Requires that a contractor agree to provide the University of California (UC) with specified information in order to qualify as the lowest responsible bidder or the best value awardee, or otherwise to perform any service work for the university. Specifically, **this bill:**

- 1) Requests the Regents of the UC to record and report to the Legislature, through a publically accessible Internet Web site maintained by the university and updated each January 1 and July 1, specified information regarding service work performed by a contractor, as defined, pursuant to an outsource contract, as defined, with links to specified related documents.
- 2) Requires that a contractor agree to provide the UC with specified information in order to qualify as the lowest responsible bidder or the best value awardee, or otherwise to perform any service work for the university.
- 3) Specifies if a contractor fails to provide any of the specified required information, or provides information that is false, the contractor would be disqualified from bidding on any contract with the university for a period of 5 calendar years from the date that the accurate information should have been provided or the date on which the violation was discovered, whichever is later.
- 4) Makes various findings and declarations.

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: Unknown. This bill is keyed fiscal.

COMMENTS: Need for the bill. According to the author, “The Legislature made it clear that it is concerned about the increase in UC contracting with contingency worker firms. We have passed three previous bills to address this issue. This is what we know about temporary workers: they are more likely to be an immigrant or person of color, earning lower wages with fewer if no benefits, less likely to have access to healthcare, and are more likely to rely on public assistance. The question once again before the Legislature is whether the University of California’s contracting practices are resulting in the avoidance of hiring direct UC employees (as found by the State Auditor), contributing to the displacement of African Americans in UC career jobs, and condemning low-wage contractors into poverty and a reliance on social services. This bill would require transparency of UC outsourcing regarding contractors’ pay compared to University employees doing comparable work, whether the University is enforcing its own minimum wage policies, whether these employees receive any health or retirement benefits - similar to the UC’s current reporting of State of California public contracts subject to prevailing wage. The bill will also allow the State to gauge the extent to which these contracts shift costs to the state by UC contractors having to rely on public assistance.”

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 (CSA) conduct an audit of UC contracting policies and processes and comparisons of compensation and benefits of UC employees versus contract employees.

The audit, report number 2016-125.1, titled “The University of California Office of the President - It Has Not Adequately Ensured Compliance With Its Employee Displacement and Services Contract Policies,” was completed in August, 2017 and found that:

- 1) UC has not fully followed its policy for justifying its decisions to displace university employees with services contract workers.
 - a) Two of the 31 services contracts we reviewed contained documentation that university employees were displaced.
 - b) The two university locations administering these contracts did not fully adhere to the displacement guidelines in either contract.
- 2) The Office of the President has not enforced compliance with the displacement guidelines and weaknesses in the guidelines may undermine their effectiveness.
- 3) Low-wage services contract workers received hourly wages that were \$3.86 lower than comparable university employees received.
- 4) The university generally adhered to the Office of the President's contract policy, but it could make improvements, such as ensuring the standard terms and conditions are included in services contracts.
- 5) Some university locations avoided competitive bidding by repeatedly amending contracts and through sole-source exceptions.
- 6) The Office of the President lacks a systemwide database that would allow it to track contracts at all university locations and report basic contract data.
- 7) The Office of the President could not substantiate \$109 million in benefits it claimed as resulting from its systemwide procurement program.

Regarding the specific provisions of this bill, page 35 of the CSA report found that:

In response to the Legislature’s request for data on the university’s contracting activities over the past five years, we contacted each campus, medical center, and the Office of the President to obtain extracts from the systems they use to track contract information. Specifically, we requested that each university location provide us with an extract of its contracts along with basic information about each contract, including whether the contract was to purchase a good or service, the contract amount, and the period it covered. However, despite the basic nature of our request, many of the campuses and medical centers, as well as the Office of the

President, were unable to provide complete extracts, as Table 7 on the following page shows. For example, the University of California, Los Angeles, campus could not provide data on the procurement methods it used, such as whether contracts were competitively bid or were sole source. The university's decentralized approach to contract management has resulted in its inability to report even the most basic contract information in the aggregate without a manual review of all of its contracts. Moreover, because the campuses, medical centers, and the Office of the President all lack complete data in their tracking systems, we were unable to respond to the Legislature's request for information about the university's contract activities over the past five years."

Arguments in support. The American Federation of State, County, and Municipal Employees, AFL-CIO, write that, "AB 2361 would finally allow the Legislature to determine the extent to which UC outsources low-wage service work, how much low-wage contractors are paid compared to University employees doing comparable work, whether the University is enforcing its own minimum wage policies, whether these contractors receive any health and/or retirement benefits (allowing the State to gauge the extent to which contractors may rely on public assistance), and whether the University of California is following competitive bidding requirements by allowing vendors, in particular women- and minority-owned companies, to bid for services."

"By following similar disclosure requirement currently in place for California public employees, UC contractors would provide data that could help legislator and other policy makers tackle the issue of income inequality in the State of California."

Arguments in opposition. The California Chamber of Commerce (CalChamber), which wrote opposing the legislation as introduced, raised concerns regarding certain information disclosures that still apply to the bill. CalChamber writes, "This measure would require any contractor with the University, who provides service work in building maintenance, cleaning or custodial services, call center services, dining services, parking, shuttle bus, or transportation services, security services, storekeeper services, truck driving services, patient care technical employee services, patient billing services, medical transcribing services, patient escort services, or nursing assistant services, to provide voluminous information about business operations for publication on state websites."

"For the employer, reporting of pay and benefits of workers and of the number of workers on a contract would disclose to its competitors the contractor's proprietary data on how it executes its contract. The contractors' staffing and compensation is not a matter of state concern – delivery of the contracted services at a competitive price and abiding by the University's specifications is the key matter of state concern."

Committee notes and recommendations. According to the author, and as noted in the findings and declarations, UC has not taken sufficient steps to develop or maintain a centralized database of contract labor or to ensure that its policies governing the compensation of contract labor are enforced. Committee staff notes that any database, especially one accessible by the public, must safeguard personally identifiable information (PII). In order to address PII concerns, *committee staff recommends and the author has agreed to accept* the following amendments:

- 1) Amend Section 92062(c)(1) to read: "(1) ~~Name~~ Unique individual identifier."

- 2) Amend Section 92062(d) to read: ~~“If an employee of a contractor objects in writing to the publication of his or her name pursuant to subdivision (c), the~~ The university ~~may shall~~ substitute a unique identifier in place of that individual’s name and shall use the same unique identifier for that individual for all periods of time worked by that individual. ~~Neither the university nor the contractor may require or encourage employees to submit an objection.”~~

Staff also notes that this legislation contains two different enforcement mechanisms. The first mechanism, as described in Section 92062(f), provides that if a contractor fails to provide any information required, or provides information that is false, the contractor shall be disqualified from bidding on any contract with the university, or entering into any contract extension, renewal, or other agreement with the university or a university contractor for a period of five calendar years from the date that the information should have been provided, or the date on which the violation was discovered, whichever is later.

The enforcement mechanism in Section 92062(g) stipulates that, if UC fails to provide any information identified as described, the Legislature shall deduct from the subsequent fiscal year’s appropriation of moneys from the general fund for the university an amount equal to the value of all contracts for which information is omitted in whole or in part. This enforcement language exists notwithstanding the language in Section 92062(f), meaning that a contractor could fail to provide certain pieces of information and the UC would be held financially accountable. This seems overly burdensome and could have a serious impact on programmatic funding for an oversight completely outside of UC’s control.

Committee staff recommends, and the author has agreed to, strike Section 92062(g) from the bill.

In order to meet policy committee deadlines, the amendments described above will be processed by the Assembly Committee on Accountability and Administrative Review.

Prior legislation. SB 572 (Lara), of 2017, which was vetoed by the governor, modified the requirements to qualify as a lowest responsible bidder or best value awardee for certain types of contracts at the University of California.

SB 959 (Lara), of 2016, which was vetoed by the Governor, is very similar in nature to SB 572.

SB 376 (Lara), of 2015, which was vetoed by the Governor, is very similar in nature to SB 959.

REGISTERED SUPPORT / OPPOSITION:

Support

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

Opposition

California Chamber of Commerce

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