
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
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SUMMARY

This bill 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) in that it; 1) require a bidder to certify in writing that its employees are compensated at a level that does not materially undercut the average per-employee total compensation for UC employees who perform comparable work, 2) eliminates the exception to the \$100,000 threshold for competitive bidding of contracts for personal services, and 3) makes existing law and the provisions of the bill applicable to any renewal or extension of an existing contract if it involves an expenditure of \$100,000 or more annually.

BACKGROUND

Existing law outlines the requirements and procedures for competitive bidding at the University of California. Existing law outlines requirements and procedures, specifically for the acquisition of materials, goods and services.
(Public Contract Code § 10500, et. seq.)

Current law 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 § 10507.7)

Current law 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 §10507.8)

Current law 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 § 10500.5)

ANALYSIS

This bill 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 it:

1. Requires a bidder to certify in writing to the University of California (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.
2. Requires the UC to:
 - A. Include in its request for proposals a calculation which considers the criteria outlined in #1.
 - B. Use all known cost escalators in the calculation to project the future rate of growth of average per-employee total compensation costs.
3. Eliminates the exception to the \$100,000 threshold for competitive bidding of contracts for personal services.
4. Expands the requirements of existing law and the provisions of the bill to include any renewal or extension of an existing contract if it involves an expenditure of \$100,000 or more annually.
5. Makes findings and declarations that the UC has squandered public resources via contracting out to for-profit private contractors that charge significant administrative overhead.
6. Makes technical and clarifying changes.

STAFF COMMENTS

1. ***Need for the bill.*** According to the author, this bill 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. This bill would require the UC, when evaluating bids for contract work, to evaluate the total employee compensation package and ensure that it does not undercut wages and benefits of existing university employees. According to the author, the UC serves as an anchor institution in the markets in which it operates, and as a public institution, and the third-largest California employer, should adopt and promote policies that respect its employees and protect workers' rights.
2. ***Related Study.*** According to a 2012 study by the UC Berkeley Labor Center, *Temporary Workers in California are Twice as Likely as Non-Temps to Live in Poverty: Problems with Temporary and Subcontracted Work in California*, almost one-quarter of a million people worked in the temporary help services industry in California in 2010. These workers were slightly younger, more likely to be female, less likely to be white non-Hispanic, and less likely to have a high school diploma or GED than the average non-temp worker. These workers were also more susceptible to workplace illness and injury, earned less than their non-temp counterparts, and were less likely to get benefits. The report notes that lowered wages mean that these workers 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 and making it difficult to enforce other protections. The report also notes that these employment relationships create downward pressure on wages.

3. ***Related Contract Provisions.*** According to the University of California (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. These 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. 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.

Staff was not provided with any documentation of formal complaints to the UC for failure to comply with these contract provisions.

4. ***Elimination of exception for personal services contracts.*** According to the UC, the current exemption for these contracts from the \$100,000 threshold allows the UC to contract directly with individuals and groups to contract for services such as classroom and special event sign language translation services, and for speaker, concert, dance, symphony, orchestra and sports venue performances.

These contracts, to the extent they exceed \$100,000 in value, would now be subject to competitive bidding.

5. ***Will it work?*** This bill requires bidders to certify to meeting the specified requirements regarding compensation. While it is clear that the cost of the contracts will increase to reflect the increased compensation levels, it is unclear whether the benefits to contingent workers envisioned by the bill will be achieved. There does not appear to be any mechanism in this bill which will ensure that employers will adhere to the compensation practices which they certify to in their bid.

The University of California (UC) is not in a position to monitor or enforce ongoing compliance with these requirements. It is unclear who will be responsible for the oversight necessary to hold contractors accountable for compliance with their certifications.

6. **Consequences?** Ultimately this bill would result in increasing UC's costs for procuring services and could potentially limit the pool of qualified bidders. The Committee may wish to consider:

What would be the impact on smaller businesses (particularly those which are disadvantaged or minority business enterprises, women business enterprises and disabled veteran business enterprises) wishing to contract with the UC?

Should/how will these restrictions apply to contracts for materials and goods?

How would these provisions affect the efforts of the University to respond to recent directives that the UC minimize its administrative costs and operate more efficiently in order to more cost effectively meet the state's teaching and research needs?

SUPPORT

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

OPPOSITION

University of California

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