
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 2361 **Hearing Date:** June 27, 2018
Author: Weber
Version: May 1, 2018
Urgency: No **Fiscal:** Yes
Consultant: Olgalilia Ramirez

Subject: University of California: outsource contracts.

SUMMARY

This bill requires that a contractor agree to provide the University of California (UC) with specified information regarding each active outsource contract in order to qualify as the lowest responsible bidder or the best value awardee, or otherwise to perform any service work for the university; it requests UC to report through a publicly accessible website that information and; requires the Legislature to deduct a certain amount from the UC's General Fund appropriation should UC fail to report the information.

BACKGROUND

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 § 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 § 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 § 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 § 10507.8)

ANALYSIS

This bill requires that a contractor agree to provide the UC with specified information regarding each active outsource contract in order to qualify as the lowest responsible bidder or the best value awardee, or otherwise to perform any service work for the university; it requests UC to report through a publicly accessible website that information and; requires the Legislature to deduct a certain amount from the UC's

General Fund appropriation should University of California (UC) fail to report the information. Specifically it,

- 1) Requests UC to record and report to the Legislature, through a publicly accessible website maintained by the university, specified information regarding each active outsource contract including descriptions of the work, cost of the work, and hourly pay of employees performing the work.
- 2) Requests the website provide links to copies of outsource contracts and that the UC update this information every January 1 and July 1, as specified.
- 3) Requests UC report by January 31 of each year information about each individual performing work as part of an outsourced contract, including the individual's job title, total hours worked, pay, and benefits. Provides that the university substitute a unique identifier in place of an individual's name.
- 4) Specifies that a contractor failing to provide specified information or provides false information necessary for UC to update the website will be disqualified from bidding on any UC contract for two years, as specified.
- 5) Specifies, if the university declares an unqualified contractor to be a qualified bidder, the Legislature is to deduct an amount equal to the value of those contracts from the UC's General Fund appropriation in the subsequent year.
- 6) Specifies that if the university fails to provide the specified information that has been requested or obtained, the Legislature is to deduct an amount equal to the value of all contracts for which information is omitted in whole or in part from the UC's General Fund appropriation in the subsequent year.
- 7) Defines various terms for purposes of the bill including, "outsourced contract," to mean a contract, purchase order, or other agreement to which the University of California is a party or beneficiary, including any extension, renewal, change order, or other revision to the contract, that provides for or allocates funding for service work to be performed by employees who are not employees of the UC at any university location or for the university's benefit. "Outsource contract" also includes any subcontract or other arrangement through which a third party provides employees who are not university employees to perform service work at any university location or for the UC.
- 8) States various legislative findings and declarations.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "In a 2012 report by the University of California, Berkeley Center for Labor Research and Education, found temporary workers are more likely to be young , female an immigrant or person of color, earning lower wages with fewer benefits, less likely to have access to healthcare and to be more likely to rely on public assistance. As the third largest employer in the state, the University's use of low-wage outsourced workers has become an issue of statewide concerns." The author highlights that a recent review of the

University of California (UC) service contracting practices by the State Auditor found, among other things, UC Office of the President has not adequately ensured compliance with its employee displacement and services contract policies.

- 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 audit.** A request made by the office of Senator Lara to the Joint Legislative Audit Committee to investigate specified employment contracts at the UC. 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 in its review of 31 service contracts at six university locations found that:
 - 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. Staff notes that the UC began implementation of its new software in July 2017.
 - The university has not fully followed its policy for justifying its decisions to displace university employees with service contract workers.
 - Two of the reviewed service contracts contained documentation that university employees were displaced.
 - The two university locations administering these contracts did not fully adhere to the displacement guidelines in either contract.
 - The Office of the President has not enforced compliance with the displacement guidelines and weaknesses in the guidelines may undermine their effectiveness.
 - Low-wage service contract workers received hourly wages that were \$3.86 lower than comparable university employees received.

- 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.
- Some university locations avoided competitive bidding by repeatedly amending contracts and through sole-source exceptions.
- 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.
- The Office of the President could not substantiate \$109 million in benefits it claimed as resulting from its systemwide procurement program.

The report recommends that the Legislature revise state law to specify the conditions under which the university may amend contracts without competition and more narrowly define the professional and personal services that the university may exempt from competitive bidding.

- 4) ***UC's Fair Wage/Fair Work plan.*** In July 2015, the University of California (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. The UC has also established a phone hotline and central online system to report complaints directly to the Office of the President.
- 5) ***Arguments in opposition.*** According to the sponsor, the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME), this bill will inform the Legislature about UC's compliance in meeting its minimum wage requirements and provide information about the extent to which UC contractors provide employees with health and retirement benefits. The sponsor indicates contractors already report information required by this bill in their tax filings.
- 6) ***Arguments in support.*** UC opposes this bill and indicates its requirements will lead to progressively more service work being insourced by the university as a result of fewer bidders being willing to work for the university. UC believes that the reluctance on the part of bidders to participate will be based on their unwillingness to share detailed and sensitive information about their workforce, such as their employee's wage information, on a publicly available website. The California Chamber of Commerce, an opponent of this bill, also raises concerns about requiring the disclosure of proprietary information.
- 7) ***Penalties.*** This bill subjects UC to a penalty should it fail to post the required information or if it contracts with a contractor who is prohibited from working with the UC pursuant to this bill. Specifically, it requires the Legislature to deduct an

amount of funds from the University of California's (UC's) General Fund that is equal to the value of all contracts for which information is omitted in whole or in part. This appears to be overly punitive and unnecessary as the Legislature has the authority to modify UC's General Fund appropriation through the budget process. This bill requires the Legislature to reduce UC's funding under the conditions described. Are the statutory penalties imposed on UC by this bill the best way to address issues of concern around use of outsourcing contracts?

Staff recommends that the bill be amended to strike penalty provisions from the bill as follows:

~~(f)(2) If a contractor fails to provide any information described in subdivision (a) or (c), or provides information that is false, and the university declares the contractor to be a qualified bidder for future contracting while the contractor is disqualified from bidding pursuant to paragraph (1), 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 the contractor is awarded a contract.~~

~~(g) If the university fails to provide any information identified in subdivisions (a) and (c) that it has requested and obtained from the contractor, or fails to provide the information described in subdivision (b), 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.~~

8) **Prior legislation.**

SB 574 (Lara, 2017) would have modified the requirements for qualifying as a lowest responsible bidder or best value awardee for contracts for materials, goods, and services at the UC. SB 574 was vetoed by the Governor, whose message read, in pertinent part:

"After twice vetoing prior attempts, I am tempted to sign this measure, for no other reason than it is a well-intentioned bill that seeks to improve the financial security of contracted workers, or, alternatively, expand direct employment at the UC for lower wage workers. As the UC prides itself on being an agent of social mobility for students, it might follow that UC could similarly be an agent of social mobility for lower-wage workers at its campuses.

Good intentions, however, aren't always enough. The mechanism to create this social change locks in cumbersome and overly costly contracting rules that provide little flexibility, regardless of circumstance. This will not serve the university or the state well.

What the state requires of the university's contracting policy should be more carefully considered, thoughtfully debated and weighed against other high value programs of expenditure. The State

Auditor's recent report made some useful recommendations on contracting practices, which the UC can act on now. Other actions to improve UC's policies can be considered when the UC's total budget is considered by the state."

SB 959 (Lara, 2016) nearly identical to SB 574 was heard and passed by this Committee in March 2016, by a vote of 7-2. SB 959 was subsequently vetoed by the Governor, whose message read, in pertinent part:

"Earlier this year, the author requested and the Legislature approved a specific state audit of UC contracting practices and contracted employees. As has been the case with prior audits, this process will likely yield some number of recommendations for change, and it would be prudent to await the recommendations from the State Auditor before embarking on the path prescribed by this bill.

While this audit is pending, I would strongly caution the University to keep its spending in check, specifically as it relates to the compensation of its highest wage earners-many of whom already make hundreds of thousands of dollars more in salary and benefits than the average UC employee or its contracted workers in the aforementioned job categories.

Continuing to enrich the highest paid workers-and they are workers for the public good-will only undermine UC's essential argument that it can't afford parity policies such as the one contemplated in this bill."

This bill is substantively similar to SB 959 (Lara, 2015) which was heard and passed by this Committee in April 2015, by a vote of 7-2. SB 376 was subsequently vetoed by the Governor, whose message read, in pertinent part:

"It's worth noting that the University of California recently responded to criticisms of its wage and contracting practices with a plan to incrementally increase its minimum wage for both employees and contract workers, and a pledge to better oversee contracts generally.

The effort to provide increased compensation to those who work for UC - either directly or on a contract basis - is well-intentioned, but I'm not prepared to embrace the provisions of this bill.

I would caution the University, however, to provide a transparent accounting of its contracts and clearly demonstrate how the interests of all its lower paid workers are being protected."

SUPPORT

AFSCME
California Labor Federation

University of California Student Association

OPPOSITION

CalChamber

University of California

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