
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 618 **Hearing Date:** June 7, 2017
Author: Low
Version: March 29, 2017
Urgency: No **Fiscal:** Yes
Consultant: Ian Johnson

Subject: Local Agency Public Construction Act: job order contracting: community college districts

NOTE: This bill has been referred to the Committees on Education and Judiciary. A "do pass" motion should include referral to the Committee on Judiciary.

SUMMARY

This bill authorizes community college districts to enter into job order contracts, an alternative construction contracting agreement currently available to school districts, until January 1, 2022.

BACKGROUND

Existing law:

- 1) Authorizes job order contracting for school districts until January 1, 2022.
- 2) Restricts the use of job order contracting to school districts that have entered into a project labor agreement that will apply to all public works in excess of \$25,000 undertaken by the school, regardless of what contracting procedure is used.
- 3) Requires job order contractors to submit a questionnaire to the school district containing specified information verified under oath.

ANALYSIS

This bill authorizes job order contracting for community college districts, in a manner similar to that authorized by existing law for school districts, until January 1, 2022. Specifically, this bill:

- 1) Requires the following process for job order contracting:
 - a) The community college district prepares a set of documents for job order contracts, including a unit price catalog, technical specifications, and any other information to describe the district's needs. Any architect, engineer, or consultant retained by the district to assist with developing the documents is prohibited from bidding as a job order contractor.

- b) The community college district prepares a request for bid, soliciting for prequalified job order contractors to submit bids as prescribed by the district.
 - c) The prequalified job order contractors bid one or more adjustment factors to the unit prices listed in the unit price catalog based on the technical specifications. Awards are made to the bidder or bidders that the district determines to be most qualified, based upon pre-established criteria, and with the requirement that the bidder or bidders comply with the district's project labor agreement.
- 2) Establishes a process requiring the community college district to prequalify job order contractors using a standard questionnaire, requiring the following information: (1) a listing of all partners; (2) evidence of ability to complete the project of similar size, scope or complexity; (3) licenses, bonds and insurance; (4) information regarding workers; compensation history, safety and apprenticeship programs; and (5) full disclosure of past violations, disciplinary actions, and lawsuits.
- 3) Requires the following related to contracts:
- a) Job order contracts shall not exceed \$5 million per year. An initial contract shall be for no more than one year, with the option to extend the contract for up to two additional years.
 - b) A job order may not commence sooner than seven days from the time the job order is issued, and a job order contractor must provide at least seven days' notice for the addition or substitution of any subcontractor. No single job order may exceed to no more than \$1 million.
- 4) Requires the following related to subcontracting and subletting:
- a) All work must comply with existing law under the Subletting and Subcontracting Fair Practices Act.
 - b) The primary job order contractor must verify that the subcontractors possess the appropriate licenses and credentials.
 - c) The primary job order contractor may use subcontractors that are not listed at the time the job order is issued if the work to be performed is less than \$10,000 and requires the job order contractor to comply with various requirements.
 - d) A community college district may terminate the job order, declare the contractor ineligible for future job orders, and rescind prequalification status if the district determines that a violation of the Subletting and Subcontracting Fair Practices Act has occurred.
- 5) Requires the following related to labor:

- a) The job order contractor must pay the prevailing wage in effect at the time the job order is issued by the community college district and all increases as published by the Department of Industrial Relations for the term of the contract, including all overtime, holiday, and shift provisions.
 - b) The community college district must designate one individual to act as a monitor to inspect job sites for labor compliance violations.
 - c) A willful violation of the Subletting and Subcontracting Fair Practices Act occurs when the job order contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply. Requires community college districts to publish and distribute to the Labor Commissioner a list of all job order contractors or subcontractors who committed violations and prohibits the district from awarding a job order contract.
 - d) For a job order exceeding \$30,000 or 20 working days, all general contractor or subcontractors must comply with the Labor Code relating to apprentices. Job order contractors are required to notify apprenticeship programs that can supply apprentices to the site of the job order. The ratios of apprentice to journeyman are specified, and payment of prevailing wage is required.
- 6) Requires the following related to fraud, waste, and abuse prevention:
- a) Prepare an independent cost estimate for all job orders under a contract. If a contractor's proposal is found to be unreasonable, not cost effective, or undesirable, the district is not obligated to issue the job order to the job order contractor and may utilize other procurement procedures.
 - b) Have the job order reviewed and approved by the appropriate level of management.
 - c) Make all documents pertaining to the approval of the job order available for public review.
- 7) Authorizes a school district to utilize job order contracting only if the district has entered into a project labor agreement that will apply to all public works 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.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, current construction options available to community college districts, such as “design-bid-build”, may not be the most efficient or cost-effective for smaller projects procured by community colleges. AB 618 is intended to provide community college districts with project labor agreements job order contracting authorization identical to one that K-12 school districts were granted in 2015 as an alternative method to deliver smaller projects while protecting the integrity of the bidding process and adherence to labor law.

- 2) ***What is job order contracting?*** Job order contracting is a 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, 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 preset unit prices.

Selection of the contractors is based on the lowest responsible bidder. This process 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.

- 3) ***What are project labor agreements?*** The term “project labor agreement” describes a category of agreements between a construction project’s managers and its workers. Individual agreements within this class vary widely. They are pre-hire collective bargaining agreements, meaning they are signed before the project is actually started, and before workers are hired. They include an agreement by the union signatories to not conduct any strikes or work stoppages, while the contractors and their subcontractors agree to no lockouts during the length of the construction project.

Other provisions commonly found in a project labor agreement include:

- a) A requirement that new employees, within a certain period of time, pay dues to the union for representing their interests before the employer.
 - b) A requirement that contractors use a local, centralized union job referral system.
 - c) Management rights including hiring, promotion, transfer, discipline or discharge of employees, and the right to reject any job applicant referred by a union.
 - d) A uniform workday, workweek, overtime, holiday and payday schedules.
 - e) Standardized work rules and regulations posted on the job site.
 - f) Standardized and often very quick dispute resolution procedures to resolve employee, contractor and/or inter-union disputes.
- 4) ***First a pilot program at Los Angeles Unified School District.*** AB 14 (Horton, 2003) first authorized job order contracting on a pilot basis 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, require notifications of the scope of work, and require reports to the Legislature.

In its November 2011 report, the Los Angeles Unified School District (LAUSD) reported that, since the inception of job order contracting in 2005, the district has executed 138 master contracts with 44 different contracting firms. As of November 1, 2011, the district had issued master contracts valued at up to \$791 million, with total contract receipts ranging from \$200,000 to \$10 million per contractor. For job orders completed through November 1, 2011, the district reported that actual project costs were reduced by an average of 9.3 percent as compared to the estimates and the procurement time. The district reports that the procurement time savings varied among projects, but overall, job order contracting produced significant time savings and provided the district with a valuable procurement tool.

Due to the success of the LAUSD pilot, AB 1431 (Gomez, 2015) authorized all school districts that have entered into a project labor agreement to utilize job order contracting.

- 5) **Arguments in support.** According to the sponsors of this bill, State Building and Construction Trades Council of California, “AB 618 will improve the cost effectiveness and efficiency of smaller construction tasks at community colleges without forgoing quality, the integrity of the bidding process, and compliance with labor laws. The bill also provides more flexibility to school and community college governing boards by removing the threshold amount for the PLA so that an amount that is more suitable to local needs can be applied upon agreement.”

The sponsor adds that “PLAs are carefully negotiated agreements used in the private and public sector that help provide career opportunities to residents of economically depressed areas, veterans, women, emancipated youth from the foster care system, and other targeted groups. These agreements are crafted to meet a community’s particular needs, and remain an invaluable tool for creating local jobs, encouraging fair and open competition, and maximizing taxpayer dollar on public works projects.”

- 6) **Arguments in opposition.** Opponents of this bill, Merit Contractors Association, argue that “Job Order Contracting (JOC) is intended to simplify the contracting process for simple, ‘routine’ construction and maintenance projects; conversely proponents of Project Labor Agreements (PLA) cite their value for complex and large construction projects with multiple construction trades. PLAs cost school districts to administer and reduce competition – meaning PLAs produce less construction for each tax dollar. AB 618 discriminates against many State-approved apprenticeship programs in conflict with PCC§2500 and CCR§230.1. AB 618 requires Community College districts that wish to execute even one JOC contract to negotiate and execute a PLA that lasts not less than five years which would apply to every construction project by the district ‘regardless of what contracting procedure is used to award that work.’...The complexity and costs associated with the PLA mandate in AB 618 are the exact opposite of the goals of JOC.”

SUPPORT

California Labor Federation
California State Association of Electrical Workers
California State Pipe Trades Council
District Council 16 Painters and Allied Trades
Foothill-DeAnza Community College District
Gordian Group
International Union of Elevator Constructors
Los Angeles Community College District
Peralta Community College District
San Francisco Community College District
State Building and Construction Trades Council of California (Sponsor)
Western States Council of Sheet Metal Workers

OPPOSITION

Associated Builders and Contractors—San Diego Chapter
American Fire Sprinkler Association
Independent Roofing Contractors of California, Inc.
Plumbing-Heating-Cooling Contractors Association of California
Western Electrical Contractors Association

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