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**AB-1431 Local Agency Public Construction Act: job order contracting.** (2015-2016)

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**Assembly Bill No. 1431**

**CHAPTER 753**

An act to amend Section 20919.15 of, and to add and repeal Article 60.4 (commencing with Section 20919.20) of Chapter 1 of Part 3 of Division 2 of, the Public Contract Code, relating to local public contracting.

[ Approved by Governor October 10, 2015. Filed with Secretary of State October 10, 2015. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1431, Gomez. Local Agency Public Construction Act: job order contracting.

Existing law, the Local Agency Public Construction Act, authorizes job order contracting, as provided, by the Los Angeles Unified School District (LAUSD), until December 31, 2020.

This bill would repeal the provisions relating to the LAUSD and would instead authorize job order contracting in a similar manner for school districts until January 1, 2022. The bill would restrict job order contracting pursuant to the bill to school districts that have entered into a project labor agreement or agreements, as defined, that will apply to all public works in excess of \$25,000 undertaken by the school district through at least December 31, 2021, regardless of what contracting procedure is used to award that work. The bill would require job order contractors to submit a questionnaire to the school district containing specified information verified under oath. By expanding the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 20919.15 of the Public Contract Code is amended to read:

**20919.15.** This article shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

**SEC. 2.** Article 60.4 (commencing with Section 20919.20) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

**Article 60.4. Job Order Contracting for School Districts**

**20919.20.** The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature, in enacting this article, to demonstrate an alternative and optional procedure for bidding of public works projects that is applicable only to school districts. The Legislature has previously authorized the use of this alternative and optional procedure only for the Los Angeles Unified School District, which is using the procedure in conjunction with its project stabilization agreement.

(b) Districts should be able to utilize cost-effective options for the delivery of public works projects, in accordance with the national trend, which include authorizations in California, to allow public entities to utilize job order contracts as a project delivery method.

(c) The benefits of a job order contract project delivery system include accelerated completion of the projects, cost savings, and reduction of construction contracting complexity for the unified school district.

(d) The job order contracting approach should be used for the purposes of reducing project cost and expediting project completion.

(e) The availability of job order contracting as a project delivery method will not preclude the use of traditional methods of project delivery if a traditional method results in higher cost savings.

(f) It is the intent of the Legislature that job order contracts be competitively bid and awarded to the bidders providing the most qualified responsive bids. It is further the intent of the Legislature that school districts use the job order contract process pursuant to this article only if the school district has entered into a project labor agreement that meets the requirements of Section 2500 for all its public works projects.

**20919.21.** As used in this chapter:

(a) "Adjustment factor" means the job order contractor's competitively bid adjustment to the school district's prices as published in the unit price catalog.

(b) "Indefinite quantity" means one or more of the construction tasks listed in the unit price catalog.

(c) "Job order" means a firm, fixed priced, lump-sum order issued by the school district to a job order contractor for a definite project scope of work as compiled from the unit price catalog to be performed pursuant to a job order contract.

(d) "Job order contract" means a contract, awarded to a most qualified bidder as described in paragraph (1) of subdivision (b) of Section 20919.24, between the school district and a licensed, bonded, and general liability insured contractor in which the contractor agrees to a fixed period, fixed-unit price, and indefinite quantity contract that provides for the use of job orders for public works or maintenance projects.

(e) "Job order contract technical specifications" means a book, published by the school district, detailing the technical specifications with regard to quality of materials and workmanship to be used by the job order contractor in accomplishing the tasks listed in the unit price catalog.

(f) "Job order contractor" means a licensed, bonded, and general liability insured contractor awarded a job order contract.

(g) "Offer to perform work" means the job order contractor's proposal for a specific job order.

(h) "Plans and specifications" means the unit price catalog and the job order contract technical specifications. The scope of work to be performed with a job order contract is potentially, but not necessarily, all the tasks published in the unit price catalog.

(i) "Project" means the specific requirements and work to be accomplished by the job order contractor in connection with an individual job order.

(j) "Project labor agreement" means an agreement that meets the requirements of Section 2500.

(k) "Project scope of work" means the document and related drawings, specifications, and writings referenced therein which together set forth the specific requirements and work to be accomplished by the job order contractor in connection with an individual job order.

(l) "Proposal" means the job order contractor prepared document quoting those construction tasks listed in the unit price catalog that the job order contractor requires to complete the project scope of work, together with the appropriate quantities of each task. The pricing of each task shall be accomplished by multiplying the construction task unit price by the proposed quantity and the contractor's competitively bid adjustment factor. The proposal shall also contain a schedule for the completion of a specific project scope of work as requested by the school district. The proposal may also contain approved drawings, work schedule, permits, or other documentation as the school district may require for a specific job order.

(m) "Public works" has the same meaning as in Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(n) "Public works project" has the same meaning as "public project," as defined in Section 22002.

(o) "Subcontractor" means any person, firm, or corporation, other than the employees of the job order contractor, who is bonded and general liability insured and who contracts to furnish labor, or labor and materials, at the worksite or in connection with a job order, whether directly or indirectly on behalf of the job order contractor.

(p) "School district" means any school district.

(q) "Unit price catalog" means a book containing specific construction tasks and the unit prices to install or demolish that construction. The listed tasks shall be based on generally accepted industry standards and information, where available, for various items of work to be performed by the job order contractor. The prices shall include the cost of materials, labor, and equipment for performing the items of work. The prices shall not include overhead and profit. All unit prices shall be developed using local prevailing wages.

**20919.22.** Provisions in this article only apply to school districts that choose to utilize job order contracting. A school district may utilize job order contracting, when permitted by this article, as an alternative to any contracting procedures that the school district is otherwise authorized or required by law to use.

**20919.23.** (a) The school district may utilize job order contracting pursuant to this article only if the school district has entered into a project labor agreement or agreements that will apply to all public works in excess of twenty-five thousand dollars (\$25,000) undertaken by the school district through at least December 31, 2021, regardless of what contracting procedure is used to award that work.

(b) The school district shall prepare an execution plan for all modernization projects that may be eligible for job order contracting pursuant to this article. The school district shall select from that plan a sufficient number of projects to be initiated as job order contracts during each calendar year and shall determine for each selected project that job order contracting will reduce the total cost of that project. Job order contracting shall not be used if the school district finds that it will increase the total cost of the project.

**20919.24.** Bidding for job order contracts shall progress as follows:

(a) (1) The school district shall prepare a set of documents for job order contracts. The documents shall include a unit price catalog and preestablished unit prices, job order contract technical specifications, and any other information deemed necessary to describe adequately the school district's needs.

(2) Any architect, engineer, or consultant retained by the school district to assist in the development of the job order contract documents shall not be eligible to participate in the preparation of a bid with any job order contractor.

(b) Based on the documents prepared under subdivision (a), the school district shall prepare a request for bid that invites prequalified job order contractors to submit competitive sealed bids in the manner prescribed by the school district.

(1) (A) The prequalified job order contractors, as determined by the school district, shall bid one or more adjustment factors to the unit prices listed in the unit price catalog based on the job order contract technical specifications. Awards shall be made to the prequalified bidders that the school district determines to be the most qualified based upon preestablished criteria made by the school district. The prequalified bidders must be in compliance with the school district's project labor agreement.

(B) Compliance shall constitute no more than three major violations on any school district projects within the last three years. If a contractor has more than three violations within a three-year period of time, the school district shall seek administrative review of the violations. Violations will include, but are not limited to, the following:

(i) Failure to register core workers with the appropriate building trade union.

(ii) Failure to assign apprentices in accordance with Section 1777.5 of the Labor Code.

(iii) Failure to comply with subdivision (c) of Section 20919.25.

(iv) Incorrect assignment of work in accordance with the school district's project labor agreement.

(2) The school district may award multiple job order contracts through a request for bid. Job order contracts shall be awarded to the most qualified prequalified bidders described in this subdivision.

(3) The request for bids may encourage the participation of local construction firms and the use of local subcontractors.

(c) (1) The school district shall establish a procedure to prequalify job order contractors using a standard questionnaire that includes, at a minimum, the issues covered by the standardized questionnaire and model guidelines for rating bidders developed by the Department of Industrial Relations pursuant to subdivision (a) of Section 20101. This questionnaire shall require information including, but not limited to, all of the following:

(A) If the job order contractor is a partnership, limited partnership, or other association, a listing of all of the partners or association members known at the time of bid submission who will participate in the job order contract.

(B) Evidence that the members of the job order contractor have the capacity to complete projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage the construction of the project, as well as a financial statement that assures the school district that the job order contractor has the capacity to complete the project.

(C) The licenses, registration, and credentials required to perform construction, including, but not limited to, information on the revocation or suspension of any license, credential, or registration.

(D) Evidence that establishes that the job order contractor has the capacity to obtain all required payment and performance bonding and liability insurance.

(E) Information concerning workers' compensation experience history, worker safety programs, and apprenticeship programs.

(F) A full disclosure regarding all of the following that are applicable:

(i) Any serious or willful violation of Part 1 (commencing with Section 6300) of Division 5 of the Labor Code or the federal Occupational Safety and Health Act of 1970 (Public Law 91-596), settled against any member of the job order contractor.

(ii) Any debarment, disqualification, or removal from a federal, state, or local government public works project.

(iii) Any instance where the job order contractor, or its owners, officers, or managing employees submitted a bid on a public works project and were found to be nonresponsive, or were found by an awarding body not to be a responsible bidder.

(iv) Any instance where the job order contractor, or its owners, officers, or managing employees defaulted on a construction contract.

(v) Any violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations of federal or state law regarding the payment of wages, benefits, apprenticeship requirements, or personal income tax withholding, or of Federal Insurance Contribution Act (FICA) withholding requirements settled against any member of the job order contractor.

(vi) Any bankruptcy or receivership of any member of the job order contractor, including, but not limited to, information concerning any work completed by a surety.

(vii) Any settled adverse claims, disputes, or lawsuits between the owner of a public works project and any member of the job order contractor during the five years preceding submission of a bid under this article, in which the claim, settlement, or judgment exceeds fifty thousand dollars (\$50,000). Information shall also be provided concerning any work completed by a surety during this period.

(G) In the case of a partnership or any association that is not a legal entity, a copy of the agreement creating the partnership or association and specifying that all partners or association members agree to be fully liable for the performance under the job order contract.

(2) The information required under this subdivision shall be verified under oath by the entity and its members in the manner in which civil pleadings in civil actions are verified. Information that is not a public record under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) shall not be open to public inspection.

**20919.25.** (a) The maximum total dollar amount that may be awarded under a single job order contract shall not exceed five million dollars (\$5,000,000) in the first term of the job order contract and, if extended or renewed pursuant to subdivision (b), a maximum of ten million dollars (\$10,000,000) over the subsequent two terms of the job order contract.

(b) Job order contracts may be executed for an initial contract term of no more than 12 months, with the option of extending or renewing the job order contract for two 12-month periods. The term of the job order contract shall be for the contract term or whenever the maximum value of the contract is achieved, whichever is less. All extensions or renewals shall be priced as provided in the request for bids. The extension or renewal shall be mutually agreed to by the school district and the job order contractor.

(c) The school district may issue job orders to the job order contractor that has been awarded the job order contract. The job order issued to the job order contractor shall not commence for seven days from the time the job order was issued and the job order contractor shall provide a minimum of seven days' notice for the addition of any subcontractor or substitution of any subcontractor as described in subdivision (e) of Section 20919.26. The job order shall be based on a project scope of work prepared by the school district as well as a proposal from the job order contractor who is awarded the job order contract. No single job order may exceed one million dollars (\$1,000,000).

(d) The amounts specified in subdivisions (a) and (c) shall be adjusted on January 1, 2016, as if this section was operative beginning January 1, 2004, to reflect the percentage change in the California Consumer Price Index, and shall be adjusted each January 1 thereafter to reflect the percentage change in the California Consumer Price Index.

(e) It is unlawful to split or separate into smaller job orders any project for the purpose of evading the cost limitation provisions of this chapter.

(f) All work performed under the job order contract shall be covered by a project labor agreement.

(g) Any change or alteration to a job order shall be in compliance with Section 20118.4.

**20919.26.** (a) All work bid under the job order contract shall comply with Chapter 4 (commencing with Section 4100) of Part 1 and is subject to all of the penalties and provisions set forth in that chapter.

(b) For purposes of this article, if the primary job order contractor chooses to use subcontractors, the primary job order contractor is required to verify that the subcontractors possess the appropriate licenses and credentials required to perform construction.

(c) Notwithstanding subdivision (a), 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 under that job order is less than ten thousand dollars (\$10,000).

(d) If the primary job order contractor chooses to use a subcontractor that is not listed at the time of bid to perform work on a job order, all of the following apply:

(1) The primary job order contractor shall provide public notice of the availability of work to be subcontracted by trade. The public notice shall include the scope of work; the project location; the name, address, and the telephone number of the primary job order contractor; and the closing date, time, and location for sealed bids to be submitted.

(2) The primary job order contractor shall take sealed bids from the subcontractors solicited for the proposal. These bids shall be publicly opened at a prescribed time and place by the primary job order contractor. After the bids are opened, the job order contractor shall notify the school district which subcontractor was selected.

(3) The notification shall include every subcontractor for all tiers and must establish the authorized subcontractor list for the job order. Work shall not commence prior to seven days' notice of the established subcontractor list and the subsequent addition of any subcontractor to the job order.

(4) The notification shall identify the scope of the work to be performed by each subcontractor to the job order, broken down by craft. If a subcontractor performs multiple crafts, the job order contractor shall identify the work of each craft to be performed.

(e) If the primary job order contractor chooses to make a substitution to the subcontractor list, the primary job order contractor shall provide a minimum of seven days' notice to the school district along with justification as to the need for the substitution. The school district may request a hearing to evaluate the substitution request, which shall be in accordance with Chapter 4 (commencing with Section 4100) of Part 1.

(f) If the school district determines that there has been a violation of Chapter 4 (commencing with Section 4100) of Part 1, including bid shopping by the primary job order contractor, the school district may terminate the job order or the contractor may lose authorization to proceed with awarded work subject to the school district's administrative due process review, if such review is established pursuant to the school district's project labor agreement. If the school district determines that a job order contractor has violated any provision set forth in Chapter 4 (commencing with Section 4100) of Part 1, the school district may declare the contractor ineligible for future job orders and may result in a loss of prequalification status for a period of time to be determined by the school district.

**20919.27.** (a) A job order contract shall set forth in the general conditions of the job order contract the party or parties responsible for seeing that the provisions of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code are complied with.

(b) For purposes of job order contracting, prevailing wages when required to be paid shall apply to all work ordered under the job order contract regardless of thresholds set forth in Section 1771.5 of the Labor Code.

(c) The job order contractor shall pay the prevailing wage in effect at the time the job order is issued by the school district and all increases as published by the Department of Industrial Relations for the term of the job order contract, including all overtime, holiday, and shift provisions published by the Department of Industrial Relations.

(d) The school district shall designate one individual to act as a monitor to inspect job sites for labor compliance violations at the request of the designated labor representative in its project labor agreement.

**20919.28.** A willful violation of Section 20919.26 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 with its provisions. The school district using job order contracting shall publish and distribute to the Labor Commissioner a list of all job order contractors or subcontractors who violate this provision and the school district shall not award a job order contract or any future job orders under an existing job order contract to any contractor or subcontractor who violates this provision during the effective period of debarment of the contractor or subcontractor.

**20919.29.** For purposes of employment of apprentices on job order contracts, when the individual job order involves more than thirty thousand dollars (\$30,000) or 20 working days, all general contractors or subcontractors shall at all times be in compliance with Section 1777.5 of the Labor Code and shall comply with the following:

(a) Prior to commencing work on an individual job order, every contractor shall submit job order award information to an applicable apprenticeship program that can supply apprentices to the site of the job order. The information submitted shall include an estimate of the journeyman hours to be performed under the contract, the number of apprenticeships proposed to be employed, and the approximate dates the apprentices would be employed. A copy of this information shall also be submitted to the awarding agency if requested by the awarding agency.

(b) The ratio of work performed by apprentices to journeymen employed in a particular craft or trade on the job order may be no higher than the ratio stipulated in the apprenticeship standard under which the apprenticeship program operates where the job order contractor agrees to be bound by those standards but, except as otherwise provided in Section 1777.5 of the Labor Code, in no case shall the ratio be less than one hour of apprenticeship work for every five hours of journeyman work.

(c) Every apprentice employed under the job order contract shall be paid the prevailing rate of per diem wages for apprentices in the trade to which he or she is registered and shall be employed only at the work of the craft or trade to which he or she is registered.

(d) Every apprentice employed under the job order contract shall be hired from the local joint labor management apprenticeship committee that has jurisdiction in the geographic area of the project.

**20919.30.** A job order contractor or subcontractor that knowingly violates the provisions involving employment of apprentices shall forfeit as a civil penalty an amount not exceeding one hundred dollars (\$100) for each full calendar day of noncompliance. The amount of this penalty shall be based on consideration of whether the violation was a good faith mistake due to inadvertence. A contractor or subcontractor that knowingly commits a second or subsequent violation of the provisions involving employment of apprentices within a three-year period where the noncompliance results in apprenticeship training not being provided as required, shall forfeit as a civil penalty a sum of not more than three hundred dollars (\$300) for each full calendar day of noncompliance and shall not be awarded any further job orders under the job order contract and shall be precluded for a period of one year from bidding on any future job order contracts.

**20919.31.** In order to prevent fraud, waste, and abuse, the school district adopting job order contracting shall do all of the following:

(a) Prepare for each individual job order developed under a job order contract an independent school district estimate. The estimate will be prepared prior to the receipt of the contractor's offer to perform work and will be compared to the contractor's proposed price to determine the reasonableness of that price before issuance of any job order. The basis for any adjustments to the school district estimate is to be documented. In the event that the contractor's proposal for a given job order is found to be unreasonable, not cost effective, or undesirable, the school district is under no obligation to issue the job order to the job order contractor, and may instead utilize any other available procurement procedures.

(b) The school district shall not issue a job order until the job order has been reviewed and approved by the appropriate level of management.

(c) Once a job order has been issued, all documents pertaining to preparation and approval of the job order, including the independent school district estimate, shall be available for public review.

**20919.32.** A school district that adopts the job order contracting process shall also adopt a payment resolution process which may include, but not be limited to, the convening of a payment resolution committee.

**20919.33.** This article shall remain in effect only until January 1, 2022, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date.

**SEC. 3.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.