
SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

Bill No: AB 2488 **Hearing Date:** June 13, 2018
Author: O'Donnell
Version: May 1, 2018
Urgency: No **Fiscal:** Yes
Consultant: Ian Johnson

Subject: School facilities: task order procurement contracting: Los Angeles Unified School District.

SUMMARY

This bill creates a five-year pilot program to allow Los Angeles Unified School District (LAUSD) to award multiple task order procurement contracts through a single bid request for repairing and renovating school facilities.

BACKGROUND

Existing law:

- 1) Requires the governing board of a school district to competitively bid and award to the lowest bidder contracts involving the following:
 - a) An expenditure of \$50,000 or more for the purchase of equipment, materials, or supplies, services (except for construction services), and repairs.
 - b) An expenditure of \$15,000 or more for a public contract project defined as construction, reconstruction, erection, alteration, renovation, improvement, demolition, repair, painting or repainting of any publicly owned, leased, or operated facility.
- 2) Establishes alternative methods for awarding school construction contracts, including lease-leaseback, design-build, best value, and job order contracting.
- 3) Authorizes contracting for services customarily performed by classified school employees only based on specified conditions.

ANALYSIS

This bill creates a five-year pilot program to allow LAUSD to award multiple task order procurement contracts through a single bid request for repairing and renovating school facilities. Specifically, this bill:

- 1) Authorizes the governing board of LAUSD to award multiple task order procurement contracts for the repair and renovation of school buildings and grounds, each not exceeding \$3,000,000, through a single request for bid.

- 2) Specifies that task order procurement contracts may include, but are not limited to, services, repairs, including maintenance, and construction as authorized in Public Contract Code Section (PCC) 20111 and paid for with moneys from Los Angeles Unified School District's (LAUSD's) general fund. Requires the contracts to be awarded to the lowest responsible bidder, and be based primarily on plans and specifications for typical work.
- 3) Specifies the following parameters:
 - a) Prior to entering into a contract, LAUSD shall ensure that it is in compliance with Education Code Section (EDC) 45103.1.
 - b) Task order procurement contracts may only be awarded to supplement existing personnel and shall not be used to supplant existing personnel.
 - c) LAUSD may utilize task order procurement contracting only if it has entered into a project labor agreement or agreements that meet the requirements of PCC 2500 for all its public works projects.
- 4) Requires LAUSD to, no later than January 15, 2023, submit to the appropriate policy and fiscal committees of the Legislature a report on the use of the task order procurement contracting method. The report shall be prepared by an independent third party and LAUSD shall pay for the cost of the report.
- 5) Requires the report to include, but not be limited to, the following information:
 - a) A description of the projects awarded using the task order procurement contracting method.
 - b) The contract award amounts.
 - c) The task order contractors awarded the projects.
 - d) A description of any written protests concerning any aspect of the solicitation, bid, or award of the task order procurement contracts, including the resolution of the protests.
 - e) A description of the prequalification process.
 - f) If a project awarded under this article has been completed, an assessment of the project performance, including, but not limited to, a summary of any delays or cost increases.
- 6) Specifies that the task order procurement contracting method is not intended to change any guideline, criterion, procedure, or requirement of the governing board of LAUSD to let a contract for a project to the lowest responsible bidder or else reject all bids.
- 7) Sunsets on January 1, 2024.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “While the Public Contract Code sets the terms and structure for awarding public works contracts, the needs in the field cannot always be anticipated. Throughout the school year, it is inevitable that a school district will receive more service requests than existing maintenance personnel can reasonably process in a timely manner. For example, during a hot summer, HVAC systems can malfunction. Initiating the procurement process after systems malfunction can take several weeks. Any delays in responding to a service request can negatively affect a teacher’s ability to provide instruction or distract a student from learning.”

“AB 2488 authorizes the LAUSD to utilize a pilot program that would allow the school district to enter into contracts in advance of the service being requested. The school district would still be required to adhere to existing law regarding competitive bidding. However, those requirements would be completed prior to when the work is needed.”

The Los Angeles Unified School District (LAUSD) indicates that with enrollment of 620,000 students and over 1,000 schools, it is inevitable that the school district receives more service requests than existing maintenance personnel can reasonably process in a timely manner during the school year. It can take several weeks to complete current procurement processes and award contracts at each location where work is needed because each contracted job requires a separate bid request, which can lead to delays in repairs. According to LAUSD, allowing the district to conduct a task order procurement process for maintenance and repair work (such as HVAC repair) would allow the district to (1) respond to service requests when they are needed, (2) secure prices during non-peak periods, and (3) prevent the district from having to issue a specific bid request for each project requiring service.

- 2) ***Public project competitive bidding.*** Under current law, school districts are required to competitively bid any public works contract over \$15,000 and award the contract to the lowest responsible bidder. Alternative methods for awarding contracts include: (1) design-build, with a school district issuing a request for proposal for both the design and construction of projects; (2) best value, allowing school districts to consider factors other than cost; and (3) job order contracting, based on prices for specific construction tasks.

This bill does not change the bidding process or the requirement to accept the lowest responsible bidder, but allows LAUSD to issue multiple contracts for a specific service through a single request for bid. When services are required, the contractors will complete one or more service repairs based on the pre-determined price up to a maximum amount of \$3 million.

- 3) ***Lease-leaseback and lease-to-own.*** Lease-leaseback is a process whereby a governing board of a school district may, through a competitive bidding process, rent district property for a minimum of \$1 a year to any person, firm, or corporation. The person, firm, or corporation constructs the school building and

rents the facility back to the school district. At the end of the lease, the district resumes title to the building and site.

In a lease-to-own agreement, the governing board of a school district may, through a competitive bidding process, enter into a contract with a person, firm, or corporation to construct the building on a designated site and lease the property to the school district. The school district gets the title at the end of the lease.

- 4) **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.

- 5) **Other contracting pilot a success.** 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, 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.

SUPPORT

Los Angeles Unified School District (sponsor)

OPPOSITION

Plumbing-Heating-Cooling Contractors Association of California
Associated Builders and Contractors

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