

Date of Hearing: April 25, 2018

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2488 (O'Donnell) – As Amended March 22, 2018

SUBJECT: School facilities: task order procurement contracting: Los Angeles Unified School District

SUMMARY: Establishes a pilot project authorizing the Los Angeles Unified School District (LAUSD) to award multiple task order procurement contracts for the repair and renovation of school buildings and grounds through a single request for bid. Specifically, **this bill:**

- 1) Authorizes the governing board of a school district 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 for the purposes of this bill, task order procurement contracts may include, but are not limited to, services, repairs, including maintenance, and construction as authorized in Section 20111 of the Public Contract Code (PCC). Requires the contracts to be awarded to the lowest responsible bidder, and be based primarily on plans and specifications for typical work.
- 3) Defines “school district” as the Los Angeles Unified School District.
- 4) Specifies the following parameters:
 - a) Prior to entering into a contract, a school district shall ensure that it is in compliance with Section 45103.1 of the Education Code.
 - b) Task order procurement contracts may only be awarded to supplement existing personnel and shall not be used to supplant existing personnel.
 - c) A school district may utilize task order procurement contracting only if the school district has entered into a project labor agreement or agreements that meet the requirements of PCC Section 2500 for all its public works projects.
- 5) Requires a school district that uses the task order procurement contracting method 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 the school district shall pay for the cost of the report.
- 6) Requires the report to include, but is not 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.
- 7) Specifies that the task order procurement contracting method is not intended to change any guideline, criterion, procedure, or requirement of the governing board of the school district to let a contract for a project to the lowest responsible bidder or else reject all bids.
- 8) Sunsets on January 1, 2024.
- 9) Expresses the intent of the Legislature to provide an optional alternative procedure for bidding to improve contract efficiencies and reduce the general fund impact to a school district.
- 10) Finds and declares that a special statute is necessary because of the need to establish a pilot project for the LAUSD to determine the potential benefits and consequences of using task order procurement contracting to facilitate infrastructure improvements and ease fiscal impacts.

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. (PCC Sections 20111 and 22002)
- 2) Establishes alternative methods for awarding school construction contracts, including lease-leaseback, design-build, best value, and job order contracting. (Education Code Sections 17406 and 17250.10, PCC Sections 20119 and 20919.20)
- 3) Authorizes contracting for services customarily performed by classified school employees only based on specified conditions. (EC Section 45103.1)

FISCAL EFFECT: Unknown

COMMENTS: *Background on contracting.* Under current law, K-12 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 have emerged over time, including design-build, which enables a school district to issue a bid for both the design and construction of projects over \$10 million; best value which authorizes school districts to consider factors other than cost; lease-leaseback, which allows a school district to lease district-owned property to a developer or contractor who constructs the project and leases the facility back to the school district; and job order contracting (JOC).

Awarding contracts prior to when services are needed. A unique aspect of JOC is that the contracts are awarded prior to when the services are needed. JOC is not based on bids for a specific project, but rather based on prices for specific construction tasks. A contractor, who has been prequalified, submits bids using an adjustment factor. The unit price, multiplied by the adjustment factor equals the price the contractor is willing to accept for work for those tasks. Selection of the contractors is based on the lowest responsible bidder; however, a school district may select more than one contractor. When the school district has a project that requires the tasks for which a contractor has been awarded, the school district will provide a job order with the details of the job. JOC allows a school district to identify contractors for specific tasks and locks in the price for up to \$5 million worth of work.

In its report to the Legislature in 2011, the LAUSD stated that for "job orders completed through November 1, 2011, actual project costs were reduced by an average of 9.26% as compared to the estimates and the procurement time. The procurement time savings varied among projects, but overall, produced significant time savings and provided the LAUSD with a valuable procurement tool."

This bill resembles JOC and a similar authorization given to the California State University (PCC Section 10726), but whereas JOC is used for capital infrastructure – new construction and modernization projects that are funded by state or local bonds, developer fees or other types of property assessments – this bill authorizes LAUSD to award multiple contracts through a single request for bid for services, maintenance and repair work that are funded by the district's general funds. The maximum amount per contract is \$3 million.

Current law allows contracting for work customarily performed by classified employees only to achieve cost savings and only if specified conditions are met, including, in part, the following: the contractor's wages are at the industry's level and do not undercut school district pay rates, the contract does not cause the displacement of school district employees, the services contracted are not available within the district, the services are needed for emergency appointments, and the contractor has equipment, materials or support services that could not feasibly be provided by the school district in the location where services are to be performed. This bill reiterates requirement to comply with this provision.

Need for bill. This bill is a pilot project for the LAUSD. The LAUSD states that the normal contracting process based on competitive bidding takes several weeks. With an enrollment of 620,000 and over 1,000 schools covering 710 square miles, including the City of Los Angeles and 26 cities and unincorporated areas of Angeles County, it is inevitable for the school district to receive more service requests than existing maintenance personnel can reasonably process in a timely manner during the school year. For example, in 2015, LAUSD received nearly 2,600 service calls for HVAC repair. With a service staff of 39 HVAC repair personnel, the district had to contract out for services due to the high volume. It took several weeks to complete the procurement process and award contracts as each location where work was needed required a

separate bid request. Initiating the procurement process after systems malfunction causes delay in repairs, which can negatively affect a teacher's ability to provide instruction or distract a student from learning. Allowing the district to conduct a competitive bidding process for HVAC and other services earlier has three benefits. One, it allows the district to respond to service requests when they are needed; two, it allows the district to secure prices during non-peak periods, thereby saving district general fund dollars for other needs; and three, it prevents the district from having to issue a specific bid request for each project requiring service.

This bill does not change the bidding process or the requirement to accept the lowest responsible bidder. The bill simply allows the district to issue multiple contracts (e.g., five companies) for a specific service (e.g., HVAC repair) through a single request for bid (versus a separate bid request for each service location). When the 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.

The LAUSD states, "Assembly Bill 2488 would establish a more efficient process for addressing maintenance and operations needs and allow for cost savings by negotiating service costs in advance of peak demands or priority requests."

Committee amendment: Staff recommends the following amendments:

- 1) Strike the code section on page 3, line 7. Intent provisions are generally not codified.
- 2) Clarify that the contracts issued pursuant to this bill are those that are funded by the general fund. This is to better distinguish and differentiate the types of jobs to be awarded through JOC versus task order contracting.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles Unified School District (sponsor)

Opposition

None received

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