

Date of Hearing: March 22, 2023

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 439 (Wendy Carrillo) – As Amended March 13, 2023

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

SUMMARY: Extends the pilot program authorizing the Los Angeles Unified School District (LAUSD) to award multiple annual task order procurement contracts for the purposes that include services, repairs, and construction until January 1, 2034. Specifically, **this bill:**

- 1) Authorizes the governing board of the LAUSD to award multiple task order procurement contracts for the repair and renovation of school buildings and grounds, each not exceeding \$3 million through a single request for bid.
- 2) Authorizes task order procurement contracts to include, but not be limited to, services, repairs, including maintenance, and construction, paid for with moneys from the school district's general fund, a local school construction bond, or federal or state funds.
- 3) Requires contracts to be awarded to the lowest responsible bidder, and to be based primarily on plans and specifications for typical work.
- 4) Requires task order procurement contracts to only be awarded to supplement existing personnel and not to be used to supplant existing personnel.
- 5) Authorizes the LAUSD to utilize task order procurement contracting only if the LAUSD has entered into a project labor agreement or agreements for all its public works projects.
- 6) Extends a sunset for this authorization until January 1, 2034.

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; and
 - 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. (Public Contract Code (PCC) 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 (EC) 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)
- 4) Authorizes the governing board of the LAUSD to award multiple task order procurement contracts for the repair and renovation of school buildings and grounds, each not exceeding \$3 million through a single request for bid. Authorizes task order procurement contracts to include, but not be limited to, services, repairs, including maintenance, and construction, as authorized, paid for with moneys from the LAUSD's general fund. Requires the contracts to be awarded to the lowest responsible bidder, and to be based primarily on plans and specifications for typical work.
- 5) Requires task order procurement contracts to only be awarded to supplement existing personnel and to not be used to supplant existing personnel.
- 6) Authorizes the LAUSD to utilize task order procurement contracting only if the school district has entered into a project labor agreement or agreements, as specified, which meet the requirements of all its public works projects. (EC 20118.6)
- 7) Requires the 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. Requires the report to be prepared by an independent third party and the school district to pay for the cost of the report. 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; and
 - f) If a project awarded task procurement contracting has been completed, an assessment of the project performance, including, but not limited to, a summary of any delays or cost increases. (EC 20118.7)
- 8) Establishes that the task order procurement contracting method is not intended to change any guideline, criterion, procedure, or requirement of the governing board of the LAUSD to let a contract for a project to the lowest responsible bidder or else reject all bids. (EC 20118.8)
- 9) Sunsets the authorization for the LAUSD to utilize task order procurement on January 1, 2024. (EC 20118.9)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, “AB 439 extends the sunset for the *Task Order Contracting for School Districts law*, allowing Los Angeles Unified School District (LAUSD) to continue to use the task order procurement method for repair and maintenance projects until 2034. Additionally, this bill permits LAUSD to use local construction bond funds for task order procurement contracts. LAUSD’s pilot program streamlined the contracting process, resulting in timely repairs, nearly all completed on or under budget. Task order contracting ensures that LAUSD is prepared for repair and maintenance requests before they are needed. School districts procure contractors when requests for services at schoolsites exceed maintenance personnel’s ability to perform the work in a timely manner, when the service requires technical expertise, or when repairs require specialized equipment. For instance, on the hottest day of the year, calls for air conditioner repairs tend to arise citywide all at once. With a task order contract in place, LAUSD can respond to service requests immediately with minimal interruptions to classroom instruction.”

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 over \$10 million; 2) best value, allowing school districts to consider factors other than cost; and 3) job order contracting (JOC), based on prices for specific construction tasks.

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.

The existing LAUSD task order procurement pilot authorization from 2019 resembles JOC, but whereas JOC issued for capital infrastructure – new construction and modernization projects that are funded with state or local bonds, developer fees or other types of property assessments – this bill extends the pilot authorization for the 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, a local school construction bond, or federal or state funds.

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. The existing LAUSD task order procurement pilot and this bill reiterate requirements to comply with this provision.

This bill does not change the bidding process or the requirement to accept the lowest responsible bidder, but allows the LAUSD to issue multiple contracts for a specific service through a single request for bid. The LAUSD is required to adhere to all existing public procurement laws and maintain a project labor agreement. 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.

Need for competitive bidding process. The following provides an illustrative example of contracting prior to the LAUSD task order procurement pilot authorization in 2019. In 2015, the 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 and can distract a student from learning. Allowing the district to conduct a competitive bidding process for HVAC and other services earlier has three benefits: 1) it allows the district to respond to service requests when they are needed; 2) it allows the district to secure prices during non-peak periods, thereby saving district general fund dollars for other needs; and 3) it prevents the district from having to issue a specific bid request for each project requiring service.

LAUSD report on the use of task order contracting. AB 2488 (O'Donnell), Chapter 129, Statutes of 2018, requires the LAUSD to submit a report, prepared by an independent third party, to the appropriate policy and fiscal committees of the Legislature by January 15, 2023. The LAUSD chose Sjoberg Evashenk Consulting, Inc. to conduct the review and paid \$78,625 in district funds for the report.

The third party review found that LAUSD implemented and followed robust and compliant processes and practices over its task order contracting method such as requiring bidders be prequalified, obtaining appropriate approvals for and publishing invitations for bids, advertising the protest process, evaluating bids, and ensuring key information was posted to the website. From Section 4 of the report, "Overall, our review found the task order contracting program has proven to be an efficient and effective process allowing LAUSD to supplement staff and make needed repairs, complete maintenance, and provide services at its many facilities for the safety of students and employees." Specific findings include:

- Between January 1, 2019, and March 31, 2022, the LAUSD awarded 68 contracts using the task ordering method with more than 3,000 individual purchase orders to provide repair and maintenance services at over 1,400 schools and centers, headquarter sites, and facilities. Services included roofing and air conditioning repairs, playground and swimming pool maintenance, and fire safety testing. Although typical competitive procurement methods can take several months making it difficult to quickly address needs at school building and grounds to ensure the safety of students and staff, the LAUSD believes the task order contracting process streamlined and shortened the time needed to contract for service and resulted in more timely school repairs, maintenance, and other needed services.

- Of the approximate 3,200 task order projects issued during the pilot period, the LAUSD completed roughly 3,000 task order projects with the majority, or 83.5%, completed on-budget or under budget. The remaining 16.5% of projects were completed for costs higher than estimated.
- While enabling legislation requires a review of projects awarded under LAUSD’s task order contracting process to assess *project* performance including any delays or cost increases, LAUSD does not currently capture or assess that type of information at the project level... Although LAUSD regularly conducts contractor performance evaluations when a contract is completed, it is still in the process of implementing a *project* performance evaluation process under the task order contracting program.

Other contracting pilot a success. AB 14 (Horton), Chapter 889, Statutes of 2003, first authorized job order contracting on a pilot basis at the 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 LAUSD reported that, since the inception of job order contracting in 2005, the district executed 138 master contracts with 44 different contracting firms. As of November 1, 2011, the district 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% as compared to the estimates and the procurement time. The district reported 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) Chapter 753, Statutes of 2015, authorized all school districts that have entered into a project labor agreement to utilize job order contracting.

Los Angeles Unified School District overview. The LAUSD is the second largest school district in the nation and in the 2021-22 school year enrolled nearly 398,000 students in kindergarten through 12th grade (this figure does not include charter school enrollment). The district covers 710 square miles and includes the City of Los Angeles as well as all or parts of 31 smaller municipalities plus several unincorporated sections of Los Angeles County.

Table 2: 2021-22 LAUSD Enrollment by Subgroup for Charter and Non-Charter Schools

Subgroup	Charter School Enrollment	Non-Charter School Enrollment	Total Enrollment
English Learners	26,657	90,273	116,930
Foster Youth	682	3,125	3,807
Homeless Youth	2,401	5,113	7,514
Migrant Education	12	760	772
Students with Disabilities	18,689	55,746	74,435
Socioeconomically Disadvantaged	106,545	339,667	446,212

All Students	150,755	397,583	548,338
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Source: California Department of Education, DataQuest

Table 3: 2021-22 Enrollment by Ethnicity for Charter and Non-Charter Schools

Ethnicity	Charter School Enrollment	Non-Charter School Enrollment	Total Enrollment
African American	10,759	29,522	40,281
American Indian or Alaska Native	384	376	760
Asian	6,255	12,905	19,160
Filipino	2,496	7,318	9,814
Hispanic or Latino	100,765	307,937	408,702
Not Reported	2,458	3,133	5,591
Pacific Islander	171	904	1,075
Two or More Races	3,640	5,879	9,519
White	23,827	29,609	53,436
Total	150,755	397,583	548,338

Source: California Department of Education, DataQuest

Recommended Committee amendments. *Staff recommends that the bill be amended* as follows:

- Require the LAUSD to prepare a report to the Legislature at the midpoint and the end of the extended pilot.
- Require the report to demonstrate the district’s progress towards implementing a project performance evaluation process, in addition to the existing contractor performance evaluation, in order to address one of the findings from the January 2023 Legislative report.
- Require funds used for task order contracting to comply with all applicable requirements for the specific fund source.

Arguments in support. The LAUSD states, “AB 439 permanently authorizes Los Angeles Unified to award task order procurement contracts for public works projects, as defined, for the purpose of performing services, repairs, and construction. This contracting method enables the district to negotiate those service contracts in advance of the service being requested so personnel are available at the time services are needed. Los Angeles Unified is required to adhere to all existing public procurement laws and maintain a project labor agreement.

Throughout the school year, it is inevitable that the District will receive service requests exceeding its capacity to respond in a reasonable amount of time. Task order contracting ensures that Los Angeles Unified is prepared for these requests beforehand. For example, on the hottest day of the year, service calls for air conditioner repairs tend to arise all at once citywide. With a task order contract in place, the District can respond to services request immediately with minimal interruptions to classroom instruction. AB 439 preserves a more efficient and cost effective process for addressing maintenance and operations needs by allowing for negotiating service costs in advance of peak demands or priority requests.”

Related legislation. AB 2488 (O'Donnell), Chapter 129, Statutes of 2018, creates a five-year pilot program through January 1, 2024, to allow the LAUSD to award multiple task order procurement contracts through a single bid request for repairing and renovating school facilities.

AB 1431 (Gomez), Chapter 753, Statutes of 2015, extends the authority to utilize JOC to all school districts.

AB 14 (Horton), Chapter 889, Statutes of 2003, authorizes the LAUSD to engage in JOC as an alternative to traditional competitive bidding for smaller modernization and maintenance contracts.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles Area Chamber of Commerce
Los Angeles Unified School District

Opposition

None on file

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