

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2580**

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**Introduced by Assembly Member Furutani**

February 24, 2012

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~~An act to amend Section 10108.8 of the Public Contract Code, relating to public contracts.~~ *An act to amend Sections 20919.3, 20919.4, 20919.6, 20919.12, and 20919.15 of the Public Contract Code, relating to public contracts, and making an appropriation therefor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2580, as amended, Furutani. ~~Department of Corrections and Rehabilitation: Business Information System Project.~~ *Public contracts: job order contracting.*

*Existing law authorizes job order contracting, as provided, by the Los Angeles Unified School District, until December 1, 2012. Existing law requires that the unified school district create a report of any job order contract procured and submit an interim report to certain committees in the Legislature and the Office of Public School Construction, as specified. Existing law requires the unified school district to provide specified notice of work for subcontractors, whose bids will be taken by the primary job order contractor. Existing law requires for contracts awarded pursuant to these provisions that the Los Angeles Unified School District pay a fee into the State Public Works Enforcement Fund, which funds are continuously appropriated for the Department of Industrial Relations' enforcement of prevailing wage requirements on public works projects.*

*This bill would extend the operation of these provisions until December 31, 2020, and would alter the dates for reporting*

requirements, as specified. This bill would require the primary job order contractor to provide the specified notice and take bids for work available for subcontractors. This bill would further require a primary job order contractor to provide justification in order to make a substitution to the subcontractor list and would authorize the district to request a hearing to evaluate the request. Because any additionally authorized projects would require payment of fees into the State Public Works Enforcement Fund, this bill would make an appropriation.

~~Existing law imposes specified procedural and substantive content requirements on contracts entered into by state agencies, including the Department of Corrections and Rehabilitation.~~

~~This bill would make technical, nonsubstantive changes to those provisions.~~

Vote: majority. Appropriation: ~~no~~ yes. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 20919.3 of the Public Contract Code is
- 2     amended to read:
- 3     20919.3. (a) (1) For contracts for public works projects
- 4     awarded prior to the effective date of the regulations adopted by
- 5     the Department of Industrial Relations pursuant to subdivision (g)
- 6     of Section 1771.5 of the Labor Code, the unified school district
- 7     shall establish and enforce for job order contracts a labor
- 8     compliance program containing the requirements outlined in
- 9     Section 1771.5 of the Labor Code, or it shall contract with a third
- 10    party to operate a labor compliance program containing the
- 11    requirements outlined in that provision. This requirement does not
- 12    apply to any project where the unified school district or the job
- 13    order contractor has entered into a collective bargaining agreement
- 14    or agreements that bind all of the contractors performing work on
- 15    the projects.
- 16    (2) For contracts for public works projects awarded on or after
- 17    the effective date of the regulations adopted by the Department of
- 18    Industrial Relations pursuant to subdivision (g) of Section 1771.5
- 19    of the Labor Code, the unified school district shall reimburse the
- 20    department for its reasonable and directly related costs of
- 21    performing prevailing wage monitoring and enforcement on public
- 22    works projects pursuant to rates established by the department as

1 set forth in subdivision (h) of Section 1771.5 of the Labor Code.  
2 All moneys collected pursuant to this subdivision shall be deposited  
3 in the State Public Works Enforcement Fund created by Section  
4 1771.3 of the Labor Code, and shall be used only for enforcement  
5 of prevailing wage requirements on those projects.

6 (3) In lieu of reimbursing the Department of Industrial Relations  
7 for its reasonable and directly related costs of performing  
8 monitoring and enforcement on public works projects, the unified  
9 school district may elect to continue operating an existing  
10 previously approved labor compliance program to monitor and  
11 enforce prevailing wage requirements on the project if it has either  
12 not contracted with a third party to conduct its labor compliance  
13 program and requests and receives approval from the department  
14 to continue its existing program or it enters into a collective  
15 bargaining agreement that binds all of the contractors performing  
16 work on the project and that includes a mechanism for resolving  
17 disputes about the payment of wages.

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

27 (c) No later than June 30, ~~2005~~ 2017, the unified school district  
28 shall submit an interim report on all job order contract projects  
29 completed by December 31, ~~2004~~ 2016, to the Office of Public  
30 School Construction in the Department of General Services and  
31 the Senate *Committee on Business, Professions and Economic*  
32 *Development* and the Assembly ~~Committees~~ *Committee on*  
33 *Business, Professions and Professions Consumer Protection* and  
34 the Senate and Assembly Committees on Education. The interim  
35 report shall be prepared by an independent third party and the  
36 unified school district shall pay for the cost of the report. The report  
37 shall include the information specified in subdivisions (a) through  
38 (h) of Section 20919.12.

39 *SEC. 2. Section 20919.4 of the Public Contract Code is*  
40 *amended to read:*

1 20919.4. Bidding for job order contracts shall progress as  
2 follows:

3 (a) (1) The unified school district shall prepare a set of  
4 documents for each job order contract. The documents shall include  
5 a catalog of construction tasks and preestablished unit prices, job  
6 order contract technical specifications, and any other information  
7 deemed necessary to describe adequately the unified school  
8 district's needs.

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

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

17 (1) The prequalified job order contractors shall, as determined  
18 by the unified school district, bid one or more adjustment factors  
19 to the unit prices listed in the catalog of construction tasks based  
20 on the job order contract technical specifications. Awards shall be  
21 made to the lowest responsible prequalified bidder.

22 (2) The unified school district may award multiple job order  
23 contracts. Each job order contract shall be awarded to the lowest  
24 responsive and responsible prequalified bidder.

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

27 (c) (1) The unified school district shall establish a procedure  
28 to prequalify job order contractors using a standard questionnaire  
29 ~~prepared by~~ *substantially similar to the questionnaire used by the*  
30 Department of Industrial Relations under Section 20101. This  
31 questionnaire shall require information including, but not limited  
32 to, all of the following:

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

37 (B) Evidence that the members of the job order contractor have  
38 the capacity to complete projects of similar size, scope, or  
39 complexity, and that proposed key personnel have sufficient  
40 experience and training to competently manage the construction

1 of the project, as well as a financial statement that assures the  
2 unified school district that the job order contractor has the capacity  
3 to complete the project.

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

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

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

13 (i) An acceptable safety record *as determined by the unified*  
14 *school district.* ~~*In its determination, the unified school district*~~  
15 ~~*shall consider, but is not required to find, a contractor's safety*~~  
16 ~~*record shall be deemed as acceptable*~~ if its experience modification  
17 rate for the most recent three-year period is an average of 1.00 or  
18 less, and its average total recordable injury/illness rate and average  
19 lost work rate for the most recent three-year period do not exceed  
20 the applicable statistical standards for its business category or if  
21 the contractor is a party to an alternative dispute resolution system  
22 as provided for in Section 3201.5 of the Labor Code.

23 (ii) Skilled labor force availability as determined by the  
24 existence of an agreement with a registered apprenticeship program,  
25 approved by the California Apprenticeship Council, that has  
26 graduated apprentices in each of the preceding five years. This  
27 graduation training for any craft that was first deemed by the  
28 Department of Labor and the Department of Industrial Relations  
29 to be an apprenticeable craft within the five years prior to the  
30 effective date of this article.

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

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

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

39 (iii) Any instance where the job order contractor, or its owners,  
40 officers, or managing employees submitted a bid on a public works

1 project and were found to be nonresponsive, or were found by an  
2 awarding body not to be a responsible bidder.

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

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

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

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

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

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

36 *SEC. 3. Section 20919.6 of the Public Contract Code is*  
37 *amended to read:*

38 20919.6. (a) All work bid under the job order-~~contract~~ shall  
39 comply with Chapter 4 (commencing with Section 4100) of Part

1 1 of Division 2 and is subject to all of the penalties and provisions  
2 set forth in that chapter.

3 (b) For purposes of Article 60.3, if the primary job order  
4 contractor chooses to use subcontractors, the primary job order  
5 contractor is required to verify that the subcontractors possess the  
6 appropriate licenses and credentials required to perform  
7 construction.

8 (c) Notwithstanding subdivision (a), the primary job order  
9 contractor may use subcontractors that are not listed at the time of  
10 ~~bid of the job order contract~~ *is issued* if the work to be performed  
11 under that job order ~~contract~~ is less than ten thousand dollars  
12 (\$10,000).

13 (d) If the primary job order contractor chooses to use a  
14 subcontractor that is not listed at the time of bid to perform work  
15 on a job order ~~contract that is less than ten thousand dollars~~  
16 (\$10,000), both of the following apply:

17 (1) ~~The unified school district~~ *primary job order contractor*  
18 shall provide public notice of the availability of work to be  
19 subcontracted by trade. The public notice shall include the scope  
20 of work; the project location; the name, address, and the telephone  
21 number of the primary job order contractor; and the closing date,  
22 time, and location for sealed bids to be submitted.

23 (2) The primary job order contractor shall take sealed bids from  
24 the subcontractors solicited for the proposal. These bids shall be  
25 publicly opened at a prescribed time and place by the primary job  
26 order contractor. After the bids are opened, ~~they shall be forwarded~~  
27 ~~to the unified school district which shall maintain them as public~~  
28 ~~records~~ *the job order contractor shall notify the unified school*  
29 *district which subcontractor was selected.*

30 (e) *If the primary job order contractor chooses to make a*  
31 *substitution to the subcontractor list, the primary job order*  
32 *contractor shall provide the unified school district with justification*  
33 *as to the need for the substitution. The unified school district may*  
34 *request a hearing to evaluate the substitution request.*

35 (e)  
36 (f) If the unified school district determines that there has been  
37 bid shopping by the primary job order contractor, the unified school  
38 district ~~shall~~ *may* terminate the job order ~~contract~~. If the unified  
39 school district determines that a job order contractor has violated  
40 *any provision set forth in Chapter 4 (commencing with Section*

1 4100) of Part 1 of Division 2, the unified school district may  
 2 declare the contractor ineligible to bid on job order contracts for  
 3 future job orders for a period of time to be determined by the  
 4 unified school district.

5 *SEC. 4. Section 20919.12 of the Public Contract Code is*  
 6 *amended to read:*

7 20919.12. If the unified school district adopts the job order  
 8 contracting process, the unified school district shall submit to the  
 9 Office of Public School Construction in the Department of General  
 10 Services, the Senate *Committee on Business, Professions and*  
 11 *Economic Development* and ~~Assembly Committees~~ *Committee on*  
 12 *Business, Professions and Professions Consumer Protection*, the  
 13 Senate and Assembly Committees on Education, and the Joint  
 14 Legislative Budget Committee before ~~December 1, 2011~~ *31, 2019*,  
 15 a report containing a description of each job order contract  
 16 procured, and the work under each contract completed on or before  
 17 ~~November 1, 2011~~ *June 30, 2019*. The report shall be prepared by  
 18 an independent third party and the unified school district shall pay  
 19 for the cost of the report. The report shall include, but not be  
 20 limited to, all of the following information:

- 21 (a) A listing of all projects completed under each job order
- 22 contract.
- 23 (b) The job order contractor that was awarded each contract.
- 24 (c) The estimated and actual project costs.
- 25 (d) The estimated procurement time savings.
- 26 (e) A description of any written protests concerning any aspect
- 27 of the solicitation, bid, proposal, or award of the job order contract,
- 28 including, but not limited to, the resolution of the protests.
- 29 (f) An assessment of the prequalification process and criteria.
- 30 (g) A description of the labor force compliance program required
- 31 under Section 20919.4, and an assessment of the impact on a
- 32 project where compliance with that program is required.
- 33 (h) Recommendations regarding the most appropriate uses for
- 34 the job order contract process.

35 *SEC. 5. Section 20919.15 of the Public Contract Code is*  
 36 *amended to read:*

37 20919.15. This article shall remain in effect only until  
 38 ~~December 1, 2012~~ *31, 2020*, and as of that date is repealed, unless  
 39 a later enacted statute, that is enacted before ~~December 1, 2012~~  
 40 *31, 2020*, deletes or extends that date.

1 SECTION 1. ~~Section 10108.8 of the Public Contract Code is~~  
2 ~~amended to read:~~  
3 ~~10108.8. The Department of Corrections and Rehabilitation~~  
4 ~~shall enter into two or more procurement contracts, where feasible,~~  
5 ~~for the purchase and development of the Business Information~~  
6 ~~System (BIS) Project. The BIS project shall be developed to allow~~  
7 ~~integration with other relevant statewide financial and personnel~~  
8 ~~systems.~~

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