

Assembly Bill No. 2580

Passed the Assembly May 21, 2012

Chief Clerk of the Assembly

Passed the Senate August 20, 2012

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2012, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 20919, 20919.1, 20919.3, 20919.4, 20919.5, 20919.6, 20919.9, 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, Furutani. 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 the job order contracts to be competitively bid and awarded to the responsible qualified bidder with the lowest responsive bid. 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 job order contracts to be awarded to the most qualified bidder, as provided, so long as that bidder is in compliance with the unified school district’s project stabilization agreement. 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 notice and 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.

Appropriation: yes.

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

SECTION 1. Section 20919 of the Public Contract Code is amended to read:

20919. 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 the Los Angeles Unified School District.

(b) The Los Angeles Unified School District 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 Legislature is uncertain of the benefits and advantages of job order contracting for California school districts and therefore looks forward to the reports required by Section 20919.12 in order to fully and competently assess any further exemptions to the school contracting process.

(f) 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.

(g) It is the intent of the Legislature that job order contracts be competitively bid and awarded to the bidder providing the most qualified responsive bid. It is further the intent of the Legislature that nothing in the job order contract process or its implementation be used to disenfranchise any bidder or class of bidders that otherwise would meet the requirements of this article.

SEC. 2. Section 20919.1 of the Public Contract Code is amended to read:

20919.1. As used in this chapter:

(a) “Adjustment factor” means the job order contractor’s competitively bid adjustment to the unified school district’s prices as published in the catalog of construction tasks.

(b) “Catalog of construction tasks” 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.

(c) “Indefinite quantity” means one or more of the construction tasks listed in the catalog of construction tasks.

(d) “Job order” means a firm, fixed priced, lump-sum order issued by the unified school district to a job order contractor for a definite project scope of work as compiled from the catalog of construction tasks to be performed pursuant to a job order contract. No single job order may exceed one million dollars (\$1,000,000) in value.

(e) “Job order contract” means a contract, awarded to the most qualified bidder as described in paragraph (1) of subdivision (b) of Section 20919.4, between the unified 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.

(f) “Job order contract technical specifications” means a book, published by the unified 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 catalog of construction tasks.

(g) “Job order contractor” means a licensed, bonded, and general liability insured contractor awarded a job order contract.

(h) “Offer to perform work” means the job order contractor’s proposal for a specific job order.

(i) “Plans and specifications” means the catalog of construction tasks 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 catalog of construction tasks.

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

(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 catalog of construction tasks 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 unified school district. The proposal may also contain approved drawings, work schedule, permits, or other documentation as the unified school district may require for a specific job order.

(m) “Public works project” has the same meaning as “public project,” as defined in Section 22002.

(n) “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.

(o) “Unified school district” means the Los Angeles Unified School District.

SEC. 3. Section 20919.3 of the Public Contract Code is amended to read:

20919.3. (a) (1) For contracts for public works projects awarded prior to the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g)

of Section 1771.5 of the Labor Code, the unified school district shall establish and enforce for job order contracts a labor compliance program containing the requirements outlined in Section 1771.5 of the Labor Code, or it shall contract with a third party to operate a labor compliance program containing the requirements outlined in that provision. This requirement does not apply to any project where the unified school district or the job order contractor has entered into a collective bargaining agreement or agreements that bind all of the contractors performing work on the projects.

(2) For contracts for public works projects awarded on or after the effective date of the regulations adopted by the Department of Industrial Relations pursuant to subdivision (g) of Section 1771.5 of the Labor Code, the unified school district shall reimburse the department for its reasonable and directly related costs of performing prevailing wage monitoring and enforcement on public works projects pursuant to rates established by the department as set forth in subdivision (h) of Section 1771.5 of the Labor Code. All moneys collected pursuant to this subdivision shall be deposited in the State Public Works Enforcement Fund created by Section 1771.3 of the Labor Code, and shall be used only for enforcement of prevailing wage requirements on those projects.

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

(b) The unified school district shall prepare an execution plan for all modernization projects that may be eligible for job order contracting pursuant to this article. The unified 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 unified school district finds that it will increase the total cost of the project.

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

SEC. 4. Section 20919.4 of the Public Contract Code is amended to read:

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

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

(2) Any architect, engineer, or consultant retained by the unified 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 unified 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 unified school district.

(1) (A) The prequalified job order contractors shall, as determined by the unified school district, bid one or more adjustment factors to the unit prices listed in the catalog of construction tasks based on the job order contract technical specifications. Awards shall be made to the prequalified bidder that the unified school district determines to be the most qualified based upon preestablished criteria made by the unified school

district. The prequalified bidder must be in compliance with the unified school district's project stabilization agreement.

(B) Compliance shall constitute no more than three major violations on any unified school district projects within the last three years. If a contractor has more than three violations within a three-year period of time, the unified 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 the requirements of subdivision (c) of Section 20919.5.

(iv) Incorrect assignment of work in accordance with the unified school district project stabilization agreement.

(2) The unified school district may award multiple job order contracts. Each job order contract shall be awarded to the most qualified prequalified bidder described in paragraph (1).

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

(c) (1) The unified 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 unified 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.

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

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

(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.

SEC. 5. Section 20919.5 of the Public Contract Code is amended to read:

20919.5. (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, ten million dollars (\$10,000,000) over the maximum two terms of the job order

contract adjusted annually to reflect the percentage change in the California Consumer Price Index.

(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 unified school district and the job order contractor.

(c) The unified 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 20919.6. The job order shall be based on a project scope of work prepared by the unified 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) 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.

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

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

SEC. 6. Section 20919.6 of the Public Contract Code is amended to read:

20919.6. (a) All work bid under the job order 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 Article 60.3, 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, both 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 unified 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 unified school district along with justification as to the need for the substitution. The unified 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 unified 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 unified school district may terminate the job order or the contractor may lose authorization to proceed with awarded work subject to

the unified school district's administrative due process review, established pursuant to the project stabilization agreement. If the unified 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 unified 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 unified school district.

SEC. 7. Section 20919.9 of the Public Contract Code is amended to read:

20919.9. 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.

SEC. 8. Section 20919.12 of the Public Contract Code is amended to read:

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

(a) A listing of all projects completed under each job order contract.

(b) The job order contractor that was awarded each contract.

(c) The estimated and actual project costs.

(d) The estimated procurement time savings.

(e) A description of any written protests concerning any aspect of the solicitation, bid, proposal, or award of the job order contract, including, but not limited to, the resolution of the protests.

(f) An assessment of the prequalification process and criteria.

(g) A description of the labor force compliance program required under Section 20919.4, and an assessment of the impact on a project where compliance with that program is required.

(h) Recommendations regarding the most appropriate uses for the job order contract process.

SEC. 9. Section 20919.15 of the Public Contract Code is amended to read:

20919.15. This article shall remain in effect only until December 31, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before December 31, 2020, deletes or extends that date.

Approved _____, 2012

Governor