

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2635

Introduced by Assembly Member ~~John A. Pérez~~ *Roger Hernández*

February 24, 2012

~~An act to amend Section 22150 of the Public Contract Code, relating to public contracts. An act to amend Sections 20919 and 20919.3 of, and to repeal Sections 20919.12, 20919.14, and 20919.15 of, the Public Contract Code, relating to public contracts, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2635, as amended, ~~John A. Pérez~~ *Roger Hernández*. ~~Public contracts: purchasing recycled products. 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 the work under each contract completed on or before November 1, 2011, and an interim report on all job order contracts completed by December 31, 2004. Existing law required the submission of these reports to certain committees in the Legislature and the Office of Public School Construction, as specified, by November 30, 2011, and June 30, 2005, respectively. 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This bill would delete the date existing law is schedule to be repealed, making the above provisions operative indefinitely. This bill would also remove the obsolete reporting requirements. Because additionally authorized projects would require payment of fees into the State Public Works Enforcement Fund, this bill would make an appropriation.

~~Existing law provides that if the fitness and quality of recycled and nonrecycled products are equal, local public entities shall purchase specified recycled products whenever they are available at the same or a lesser total cost than nonrecycled items.~~

~~This bill would make technical, nonsubstantive changes to that provision.~~

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 of the Public Contract Code is
2 amended to read:

3 20919. The Legislature finds and declares all of the following:
4 (a) It is the intent of the Legislature, in enacting this article, to
5 demonstrate an alternative and optional procedure for bidding of
6 public works projects that is applicable only to the Los Angeles
7 Unified School District.

8 (b) The Los Angeles Unified School District should be able to
9 utilize cost-effective options for the delivery of public works
10 projects, in accordance with the national trend, which include
11 authorizations in California, to allow public entities to utilize job
12 order contracts as a project delivery method.

13 (c) The benefits of a job order contract project delivery system
14 include accelerated completion of the projects, cost savings, and
15 reduction of construction contracting complexity for the unified
16 school district.

17 (d) The job order contracting approach should be used for the
18 purposes of reducing project cost and expediting project
19 completion.

20 ~~(e) The Legislature is uncertain of the benefits and advantages
21 of job order contracting for California school districts and therefore
22 looks forward to the reports required by Section 20919.12 in order
23 to fully and competently assess any further exemptions to the
24 school contracting process.~~

1 ~~(f)~~

2 (e) The availability of job order contracting as a project delivery
3 method will not preclude the use of traditional methods of project
4 delivery if a traditional method results in higher cost savings.

5 ~~(g)~~

6 (f) It is the intent of the Legislature that job order contracts be
7 competitively bid and awarded to the responsible qualified bidder
8 providing the lowest responsive bid. It is further the intent of the
9 Legislature that nothing in the job order contract process or its
10 implementation be used to disenfranchise any bidder or class of
11 bidders that otherwise would meet the requirements of this article.

12 *SEC. 2. Section 20919.3 of the Public Contract Code is*
13 *amended to read:*

14 20919.3. (a) (1) For contracts for public works projects
15 awarded prior to the effective date of the regulations adopted by
16 the Department of Industrial Relations pursuant to subdivision (g)
17 of Section 1771.5 of the Labor Code, the unified school district
18 shall establish and enforce for job order contracts a labor
19 compliance program containing the requirements outlined in
20 Section 1771.5 of the Labor Code, or it shall contract with a third
21 party to operate a labor compliance program containing the
22 requirements outlined in that provision. This requirement does not
23 apply to any project where the unified school district or the job
24 order contractor has entered into a collective bargaining agreement
25 or agreements that bind all of the contractors performing work on
26 the projects.

27 (2) For contracts for public works projects awarded on or after
28 the effective date of the regulations adopted by the Department of
29 Industrial Relations pursuant to subdivision (g) of Section 1771.5
30 of the Labor Code, the unified school district shall reimburse the
31 department for its reasonable and directly related costs of
32 performing prevailing wage monitoring and enforcement on public
33 works projects pursuant to rates established by the department as
34 set forth in subdivision (h) of Section 1771.5 of the Labor Code.
35 All moneys collected pursuant to this subdivision shall be deposited
36 in the State Public Works Enforcement Fund created by Section
37 1771.3 of the Labor Code, and shall be used only for enforcement
38 of prevailing wage requirements on those projects.

39 (3) In lieu of reimbursing the Department of Industrial Relations
40 for its reasonable and directly related costs of performing

1 monitoring and enforcement on public works projects, the unified
2 school district may elect to continue operating an existing
3 previously approved labor compliance program to monitor and
4 enforce prevailing wage requirements on the project if it has either
5 not contracted with a third party to conduct its labor compliance
6 program and requests and receives approval from the department
7 to continue its existing program or it enters into a collective
8 bargaining agreement that binds all of the contractors performing
9 work on the project and that includes a mechanism for resolving
10 disputes about the payment of wages.

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

20 ~~(c) No later than June 30, 2005, the unified school district shall~~
21 ~~submit an interim report on all job order contract projects~~
22 ~~completed by December 31, 2004, to the Office of Public School~~
23 ~~Construction in the Department of General Services and the Senate~~
24 ~~and the Assembly Committees on Business and Professions and~~
25 ~~the Senate and Assembly Committees on Education. The interim~~
26 ~~report shall be prepared by an independent third party and the~~
27 ~~unified school district shall pay for the cost of the report. The report~~
28 ~~shall include the information specified in subdivisions (a) through~~
29 ~~(h) of Section 20919.12.~~

30 *SEC. 3. Section 20919.12 of the Public Contract Code is*
31 *repealed.*

32 ~~20919.12. If the unified school district adopts the job order~~
33 ~~contracting process, the unified school district shall submit to the~~
34 ~~Office of Public School Construction in the Department of General~~
35 ~~Services, the Senate and Assembly Committees on Business and~~
36 ~~Professions, the Senate and Assembly Committees on Education,~~
37 ~~and the Joint Legislative Budget Committee before December 1,~~
38 ~~2011, a report containing a description of each job order contract~~
39 ~~procured, and the work under each contract completed on or before~~
40 ~~November 1, 2011. The report shall be prepared by an independent~~

1 ~~third party and the unified school district shall pay for the cost of~~
2 ~~the report. The report shall include, but not be limited to, all of the~~
3 ~~following information:~~

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

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

7 ~~(c) The estimated and actual project costs.~~

8 ~~(d) The estimated procurement time savings.~~

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

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

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

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

18 *SEC. 4. Section 20919.14 of the Public Contract Code is*
19 *repealed.*

20 ~~20919.14. It is the intent of the Legislature that a moratorium~~
21 ~~be placed on the enactment of any additional legislation authorizing~~
22 ~~school districts to use job order contracting until the Legislature~~
23 ~~has received the reports required by Section 20919.12.~~

24 *SEC. 5. Section 20919.15 of the Public Contract Code is*
25 *repealed.*

26 ~~20919.15. This article shall remain in effect only until~~
27 ~~December 1, 2012, and as of that date is repealed, unless a later~~
28 ~~enacted statute, that is enacted before December 1, 2012, deletes~~
29 ~~or extends that date.~~

30 ~~SECTION 1. Section 22150 of the Public Contract Code is~~
31 ~~amended to read:~~

32 ~~22150. (a) If fitness and quality are equal, each local public~~
33 ~~entity shall purchase recycled products, as defined in Section~~
34 ~~12200, instead of nonrecycled products whenever recycled products~~
35 ~~are available at equal or lesser total cost than nonrecycled items.~~

36 ~~(b) A local public entity may give preference to suppliers of~~
37 ~~recycled products.~~

1 ~~(e) A local public entity may define the amount of this~~
2 ~~preference.~~

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