

An act to amend Sections 10351 and 10371 of, to add Section 10108.6 to, and to add Article 1.3 (commencing with Section 10113) to Chapter 1 of Part 2 of Division 2 of, the Public Contract Code, relating to public contracts.

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 10108.6 is added to the Public Contract Code, to read:

10108.6. Notwithstanding Section 10108 and subdivision (a) of Section 10108.5, the department, upon request from the state agency concerned, may authorize the carrying out of a project or a class of projects of any amount directly by a state agency if the department finds that the state agency concerned is capable of successfully undertaking a project or projects of that amount. For projects or a class of projects where the total project cost exceeds three million dollars (\$3,000,000), the department shall seek approval from the Department of Finance prior to authorizing a state agency to carry out the project or class of projects pursuant to this section.

SEC. 2. Article 1.3 (commencing with Section 10113) is added to Chapter 1 of Part 2 of Division 2 of the Public Contract Code, to read:

Article 1.3. Job Order Contracting Procurement Procedure for the Department of General Services

10113. As used in this article:

(a) "Adjustment factor" means the job order contractor's competitively bid adjustment to the department's prices as published in the unit price catalog.

(b) "Department" means the Department of General Services or a successor state agency.

(c) "Director" means the Director of General Services or a designee.

(d) "Job order contract" means a competitively bid contract between the department and a responsible contractor in which the contractor agrees to a fixed period, fixed-unit price, and indefinite quantity contract that provides for job orders for public works.

(e) "Technical specifications" means information published by the department 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 unit price catalog.

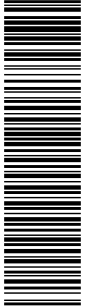
(f) "Unit price" means the amount paid for a single unit of an item of work identified in the unit price catalog multiplied by the contractor's adjustment factor.

(g) "Unit price catalog" means a compilation of 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.

10113.1. (a) Notwithstanding any other law, the department may use an alternative procurement procedure for public works contracts, as defined in Section 1101, as provided in this article.

(b) The availability of job order contracting as a public works delivery method shall not preclude the use of other public works delivery methods.

(c) The department may solicit for job order contractors by region, by specific scopes of work, or both.



(d) Solicitations for job order contractors shall progress as follows:

(1) The department shall prepare a set of documents for job order contracts. The documents shall include a unit price catalog, job order contract terms, job order contract technical specifications, and any other information deemed necessary by the department.

(2) The department shall prepare a request for bids based on the documents prepared under paragraph (1) that invites job order contractors to submit sealed bids in a manner prescribed by the department.

(3) Each bidding job order contractor shall include in its bid one or more adjustment factors to the established unit prices provided in the request for bids based on the contract technical specifications.

(4) The department may award multiple job order contracts in response to a single job order contract solicitation as determined by the lowest combined adjustment factors as outlined in the invitation for bids.

(e) Any architect, engineer, consultant, or contractor retained by the department to assist in the development of the job order contract solicitation documents shall not be eligible to bid or to participate in the preparation of a job order contract bid related to that solicitation.

(f) Each job order executed under a job order contract shall provide an itemized list of each unit description required to complete the work with the unit's associated unit price and the applied contractor's adjustment factor.

(g) Job order contracts may be executed for an initial contract term of no more than 24 months.

(h) The maximum total dollar amount that may be awarded under a single job order contract shall not exceed ten million dollars (\$10,000,000) in the first term of the job order contract. The department may issue up to four one-year extensions to each job order contract, up to an additional five million dollars (\$5,000,000) per year.

(i) No single job order may exceed one million dollars (\$1,000,000), not including change orders necessary to complete the scope of the original project.

(j) The maximum amounts specified for job order contract value and job order value shall be adjusted each January 1 to reflect the percentage change in the annual California Construction Index as used by the department. The amount shall be rounded off to the nearest one-thousand-dollar figure.

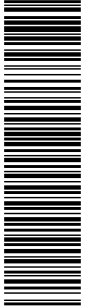
(k) The authority granted to the department by this article shall not be deemed to waive any provision of the Labor Code that would otherwise apply, including, but not limited to, prevailing wage rates determined by the Director of Industrial Relations.

(l) It is unlawful to split or separate job orders for the purpose of evading the cost limitation provisions of this section.

(m) (1) A contractor shall not be awarded a job order contract unless the contractor provides an enforceable commitment to the director that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work for each job order that falls within an apprenticeable occupation in the building and construction trades, in accordance with Chapter 2.9 (commencing with Section 2600) of Part 1.

(2) This subdivision shall not apply if any of the following requirements are met:

(A) The department has entered into a project labor agreement that will bind all contractors and subcontractors performing work on each job order to use a skilled and trained workforce, and the contractor agrees to be bound by that project labor agreement.



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(B) The job order is being performed under the extension or renewal of a project labor agreement that was entered into by the department before January 1, 2024.

(C) The contractor has entered into a project labor agreement that will bind the contractor and all its subcontractors at every tier performing work for each job order to use a skilled and trained workforce.

(3) For purposes of this subdivision, “project labor agreement” has the same meaning as in paragraph (1) of subdivision (b) of Section 2500.

(n) (1) A job order contract shall set forth in the general conditions of the job order contract the party or parties responsible for seeing that the provisions of Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code are complied with.

(2) For purposes of job order contracting, prevailing wages when required to be paid shall apply to all work ordered under the job order contract regardless of thresholds set forth in Section 1771.5 of the Labor Code.

(3) The job order contractor shall pay the prevailing wage in effect at the time the job order is issued by the department and all increases as published by the Department of Industrial Relations for the term of the job order contract, including all overtime, holiday, and shift provisions published by the Department of Industrial Relations.

(o) It is the intent of this legislation to streamline the delivery of public works. It is not the intent of the Legislature for job order contracting to displace work presently performed by state employees, nor to expand the types of public works performed by contractors.

SEC. 3. Section 10351 of the Public Contract Code is amended to read:

10351. (a) The department shall exempt from its approval contracts under one hundred fifty thousand dollars (\$150,000) that any state agency awards if the state agency does all of the following:

(1) Designates an agency officer as responsible and directly accountable for the agency’s contracting program.

(2) Establishes written policies and procedures and a management system that will ensure the state agency’s contracting activities comply with applicable provisions of law and regulations and that it has demonstrated the ability to carry out these policies and procedures and to implement the management system.

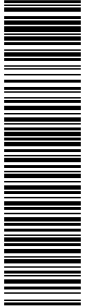
(3) Establishes a plan for ensuring that contracting personnel are adequately trained in contract administration and contract management.

(4) Conducts an audit every ~~two~~ three years of the contracting program and reports to the department as it may require.

(5) Establishes procedures for reporting to the department and the Legislature on such contracts as the Legislature may require in the Budget Act.

(b) Any state agency may request the department to exempt from its approval classes or types of contracts under this section. When the department receives a request but refuses to grant the exemption, it shall state in writing the reasons for the refusal. It is the intent of the Legislature that the department shall actively implement the provisions of this section and shall exempt from its approval as wide a range of classes or types of contracts as is consistent with proper administrative controls and the best interests of the state.

SEC. 4. Section 10371 of the Public Contract Code is amended to read:



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10371. The following provisions shall apply to all consulting services contracts:

(a) Each state agency shall, regardless of the fiscal amount involved, use available private resources only when the quality of work of private resources is of at least equal quality compared with the state agency operated resources.

~~(b) Any state agency that enters into or expects to enter into more than one consulting services contract with the same individual, business firm, or corporation within a 12-month period for an aggregate amount of twelve thousand five hundred dollars (\$12,500) or more, shall notify, in writing, the department and shall have each contract that exceeds an aggregate amount of twelve thousand five hundred dollars (\$12,500) approved by the department.~~

~~(c)~~

(b) Each state agency shall, prior to signing a consulting services contract totaling five thousand dollars (\$5,000) or more, prepare detailed criteria and a mandatory progress schedule for the performance of the contract and shall require each selected contractor to provide a detailed analysis of the costs of performing the contract.

~~(d)~~

(c) Except in an emergency, no consulting services contract shall be commenced prior to formal approval by the department or, if the department's approval is not otherwise required, by the director of the state agency. No payments for any consulting services contract shall be made prior to this approval of the award.

For the purpose of this subdivision an "emergency" means an instance, as determined by the department, where the use of contracted services appeared to be reasonably necessary but time did not permit the obtaining of prior formal approval of the contract.

~~(e)~~

(d) No consulting services contractor shall be awarded a contract totaling five thousand dollars (\$5,000), or more, unless all of the following apply:

(1) The state agency has reviewed any contractor evaluation form on file with the department in accordance with Section 10369.

(2) Each state agency shall require that a completed resumé for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor, be attached to the contract for public record and is made a part of the contract.

(3) The department shall notify a state agency seeking approval of a proposed contract within 10 working days if it has a negative evaluation in its files on a previous contract or contracts awarded to this contractor.

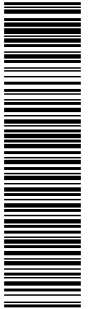
~~(f)~~

(e) The department may require special evaluation procedures for multiyear contracts or for contracts calling for special evaluation procedures beyond the post-evaluation.

~~(g)~~

(f) Any contract for consulting services awarded without competition shall be listed in the California State Contracts Register. The information contained in the listing shall include the contract recipient, amount, and services covered. The requirement of this subdivision shall not apply to any contract awarded without competition executed with an expert witness for purposes of civil litigation in a pending case.

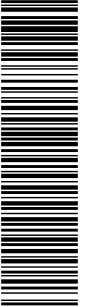
~~(h)~~



(g) The department shall have the duty to restrict or terminate the authority of a state agency to enter into consultant contracts if the state agency has consistently avoided the proper preparation, retention, or submission of post-evaluation forms, as required by this article.

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## LEGISLATIVE COUNSEL'S DIGEST

Bill No.

as introduced, \_\_\_\_\_.

General Subject: State contracts: delegation: job order contracting procurement: approval.

(1) Existing law, the State Contract Act, authorizes a department, defined as specified state entities as to any project under the jurisdiction of that state entity, to authorize the carrying out of the project directly by the state agency concerned therewith if the estimated cost does not exceed \$600,000, except as specified, where the nature of the work, in the opinion of the department, is such that its services in connection therewith are not required.

This bill would also authorize a department described above, upon request from the state agency concerned, to authorize the carrying out of a project, or a class of projects, with an estimated cost of any amount directly by the state agency concerned if the department finds that the state agency is capable of successfully undertaking the project or projects of that amount. The bill would require a department, for projects or a class of projects where the total project cost exceeds \$3,000,000, to seek approval from the Department of Finance prior to authorizing a state agency to carry out the project or class of projects.

(2) The State Contract Act generally provides for a contracting process by state agencies for public works of improvement pursuant to a competitive bidding process, under which bids are awarded to the lowest responsible bidder, with specified alternative procurement procedures authorized in certain cases. Other existing law authorizes certain state and local agencies to engage in job order contracting, as prescribed.

This bill would amend the act to authorize the Department of General Services (DGS) to engage in job order contracting, as prescribed, as an alternative procurement procedure for public works. The bill would restrict such a contract to a maximum initial contract term of 24 months. The bill would impose a maximum contract amount of \$10,000,000 in the first term of the contract and authorize the DGS to issue up to 4 one-year extensions to each job order contract, up to an additional \$5,000,000 per year. The bill would prohibit any single job order from exceeding \$1,000,000, as prescribed. The bill would provide for the adjustment of these caps to reflect the percentage change in the annual California Construction Index, as prescribed.

Existing law establishes requirements that apply when a public entity is required by statute or regulation to obtain an enforceable commitment that a bidder, contractor, or other entity will use a skilled and trained workforce, which requires, among other conditions, that all the workers performing work in an apprenticeable occupation, as defined, in the building and construction trades are either skilled journeypersons or registered apprentices. Existing law also authorizes a public entity to require that a bidder, contractor, or other entity use a skilled and trained workforce to complete a contract or project, regardless of whether the public entity is required to do so by a statute or regulation.



This bill, with prescribed exceptions, would prohibit a contractor from being awarded a job order contract unless the contractor provides an enforceable commitment to the Director of General Services that the contractor and its subcontractors at every tier will use a skilled and trained workforce to perform all work for each job order that falls within an apprenticeable occupation in the building and construction trades, in accordance with existing law.

Existing law, except as specified, requires that, for workers employed on public works, as defined, not less than the general prevailing rate of per diem wages, determined as provided by the Director of Industrial Relations, for work of a similar character in the locality in which the public work is performed be paid to those workers, as provided.

This bill would require a job order contract to set forth in the general conditions of the job order contract the party or parties responsible for seeing that prevailing wage requirements are complied with. The bill would provide that, for purposes of job order contracting, prevailing wages when required to be paid apply to all work ordered under the job order contract regardless of thresholds set forth in existing law. The bill would require the job order contractor to pay the prevailing wage in effect at the time the job order is issued by the DGS and all increases as published by the Department of Industrial Relations for the term of the job order contract, as prescribed.

(3) Existing law governs state acquisition of goods and services and, except as specified, requires DGS approval for contracts entered into by any state agency for the acquisition of goods, services, the construction, alteration, improvement, repair, or maintenance of property, or the performance of work or services by the state agency for or in cooperation with any person or public body. Existing law requires the DGS to exempt from its approval contracts under \$150,000 that any state agency awards if the state agency complies with certain requirements, including conducting an audit every 2 years of the contracting program and reporting to the DGS as it requires. Existing law also requires any state agency that enters into or expects to enter into more than one consulting services contract with the same individual, business firm, or corporation within a 12-month period for an aggregate amount of \$12,500 or more to notify the DGS and have it approve each contract that exceeds that amount.

This bill would revise the approval exemption provision for contracts under \$150,000 to instead require a state agency to conduct the audit every 3 years of the contracting program. The bill would remove the notification and approval requirement for consulting services contracts that exceed \$12,500.

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

