



**AP 6355**

**CONTRACTS - JOB ORDER CONTRACTS NEW**

**References:**

Public Contract Code Sections 20665.20 et seq.

The Chief Business Officer or designee shall prepare an execution plan for all modernization projects that may be eligible for job order contracting. The 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 District finds that it will increase the total cost of the project.

**Bidding**

The District shall prepare a set of documents for job order contracts. The documents shall include a unit price catalog and pre-established unit prices, job order contract technical specifications, and any other information deemed necessary to adequately describe the community college district's needs.

Any architect, engineer, consultant, or contractor retained by the District to assist in the development of the job order contract documents shall not be eligible to bid or to participate in the preparation of a bid with any job order contractor.

Based on the documents prepared, a community college district shall prepare a request for bid that invites prequalified job order contractors to submit competitive sealed bids in the manner prescribed by the District. The prequalified job order contractors, as determined by a community college district, shall bid one or more adjustment factors to the unit prices listed in the unit price catalog based on the job order contract technical specifications. Awards shall be made to the prequalified bidders that the District determines to be the most qualified based upon pre-established criteria made by the District. The prequalified bidders shall be in compliance with the District's project labor agreement. Compliance shall constitute no more than three major violations on any community college district projects within the last three years. If a contractor has more than three violations within a three-year period of time, the District shall seek administrative review of the violations. Violations will include, but are not limited to, the following:



- Failure to register core workers with the appropriate building trade union.
- Failure to assign apprentices in accordance with Labor Code Section 1777.5.
- Failure to comply with subdivision (c) of Public Contract Code Section 20665.25.
- Incorrect assignment of work in accordance with the District's project labor agreement.

The District may award multiple job order contracts through a request for bid. Job order contracts shall be awarded to the most qualified prequalified bidders.

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

### **Pre-Qualification**

The 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:

- 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.
- 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 District that the job order contractor has the capacity to complete the project.
- 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.
- Evidence that establishes that the job order contractor has the capacity to obtain all required payment and performance bonding and liability insurance.
- Information concerning workers' compensation experience history, worker safety programs, and apprenticeship programs.
- A full disclosure regarding all of the following that are applicable:
  - 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.

- Any debarment, disqualification, or removal from a federal, state, or local government public works project.
- 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 non-responsive, or were found by an awarding body not to be a responsible bidder.
- Any instance where the job order contractor, or its owners, officers, or managing employees defaulted on a construction contract.
- 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.
- 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.
- 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.

The information required 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.

#### **Maximum Amount and Term of Contract**

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



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 community college district and the job order contractor.

The 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 Public Contract Code Section 20665.26. The job order shall be based on a project scope of work prepared by the 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).

Job orders may not be split or separated into smaller job orders on any project for the purpose of evading the cost limitation provisions stated above.

All work performed under the job order contract shall be covered by a project labor agreement. Any change or alteration to a job order shall be in compliance with Public Contract Code Section 20118.4.

### **Contractor's Use of Subcontractors**

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.

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).

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, all of the following apply:

- 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 telephone number of the primary job order contractor; and the closing date, time, and location for sealed bids to be submitted.

- The primary job order contractor shall take sealed bids from 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 District which subcontractor was selected.
- The notification shall include every subcontractor for all tiers and shall 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.
- 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.
- 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 District along with justification as to the need for the substitution. The community college 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 of the Public Contract Code.
- If the District determines that there has been a violation of Chapter 4 (commencing with Section 4100) of Part 1 of the Public Contract Code, including bid shopping by the primary job order contractor, the District may terminate the job order or the contractor may lose authorization to proceed with awarded work subject to the District's administrative due process review, if that review is established pursuant to the District's project labor agreement. If the District determines that a job order contractor has violated any provision set forth in Chapter 4 (commencing with Section 4100) of Part 1 of the Public Contract Code, the District may remove prequalification status for a period of time and may also declare the contractor ineligible for future job orders.

### **District's Obligations**

The District will prepare an independent community college district estimate for each individual job order developed under a job order contract. The estimate will be prepared prior to the receipt of the contractor's offer to perform work and will be compared to the contractor's proposed price to determine the reasonableness of that price before issuance of any job order. The basis for any adjustments to the district estimate is to be



documented. If the contractor's proposal for a given job order is found to be unreasonable, not cost effective, or undesirable, the District is under no obligation to issue the job order to the job order contractor, and may instead utilize any other available procurement procedures.

The District shall not issue a job order until the job order has been reviewed and approved by the appropriate level of management.

Once a job order has been issued, all documents pertaining to the preparation and approval of the job order, including the independent district estimate, shall be available for public review.

The District shall designate one individual to act as a monitor to inspect job sites for labor compliance violations at the request of the designated labor representative in its project labor agreement.

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Legal Reference Update #32: April 2018

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