

Date of Hearing: April 3, 2024

ASSEMBLY COMMITTEE ON EDUCATION

Al Muratsuchi, Chair

AB 2009 (Rendon) – As Amended April 1, 2024

SUBJECT: School districts: public contracts

SUMMARY: Increases the expenditure amounts and conditions under which the governing board of a school district is required to let a contract for a public project, and is authorized to make repairs by day labor or force account. Requires the Superintendent of Public Instruction (SPI) to annually adjust the expenditure amounts, as specified. Specifically, **this bill:**

- 1) Requires the governing board of a school district to let a contract for a public project involving any expenditure of \$34,500 or more to the lowest responsible bidder (“informal bid”).
- 2) Requires, commencing January 1, 2026, the SPI to annually adjust \$34,500 referenced in (1), above, to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce, for the 12-month period ending in the prior fiscal year.
- 3) Authorizes the governing board of a school district with an ADA of 35,000 or greater to make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours, and when the cost of materials does not exceed \$43,000.
- 4) Requires, commencing January 1, 2026, and each January 1 thereafter, the SPI to annually adjust the amounts specified (3), above, to reflect the percentage change in the California Cost Consumer Price Index for all items from January of the prior year to January of the current year, as determined by the Department of Industrial Relations.
- 5) Authorizes the governing board of a school district to elect, by adopting a resolution, to evaluate the California Uniform Public Construction Cost Accounting Act (CUPCAA) without electing to become subject to those procedures if the governing board meets all of the following requirements:
 - a) The governing board of the school district has not already elected by resolution to be subject to the uniform construction cost accounting procedures and notified the Controller of that election;
 - b) The school district has an ADA of 35,000 or more pupils; and
 - c) The governing board of a school district has entered into a project labor agreement (PLA), as specified, for all of its public works projects.

- 6) Requires, for one year following the adoption of the resolution to evaluate the CUPCAA, the threshold set forth (1), above, to be \$220,000, and the limitations set forth in (3) above, to be when the hours do not exceed 750 hours or the cost of material does not exceed \$70,000.
- 7) States that a governing board of a school district that adopts a resolution to evaluate the CUPCAA is under no obligation to elect to become subject to the CUPCAA. Requires, if the governing board has not elected to be subject to the CUPCAA within one year following the adoption of the resolution to evaluate the CUPCAA, the school district to thereafter be subject to the threshold set forth in (1) and (3), above.
- 8) Defines the following:
 - a) "Maintenance" to mean routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition for which it was designed, improved, constructed, altered, or repaired (as defined in Public Contract Code (PCC) 20115); and
 - b) "Public project" (as defined in PCC 22002) to mean any of the following:
 - i) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility; and
 - ii) Painting or repainting of any publicly owned, leased, or operated facility.
 - iii) In the case of a publicly owned utility system, "public project" includes only the construction, erection, improvement, or repair of dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher.
 - c) "Uniform construction cost accounting procedures" to mean the CUPCAA.

EXISTING LAW:

- 1) Requires the governing board of any school district, in accordance with any requirement established by that governing board, as specified, to let any contracts involving an expenditure of more than \$50,000 for any of the following:
 - a) The purchase of equipment, materials, or supplies to be furnished, sold, or leased to the district;
 - b) Services, except construction services; and
 - c) Repairs, including maintenance, as specified, that are not a public project. (PCC 20111)
- 2) Requires the governing board to let the contract to the lowest responsible bidder to give security as the board requires, or else reject all bids. (PCC 20111)
- 3) Requires the governing board to let any contract for a public project, as specified, involving an expenditure of \$15,000 or more, to the lowest responsible bidder to give security as the

board requires, or else reject all bids. Requires all bids for construction work to be presented under sealed cover, and be accompanied by one of the following forms of bidder's security:

- a) Cash;
 - b) A cashier's check made payable to the school district;
 - c) A certified check made payable to the school district; and
 - d) A bidder's bond executed by an admitted surety insurer, made payable to the school district. (PCC 20111)
- 4) Requires, upon award to the lowest bidder, the security of an unsuccessful bidder to be returned in a reasonable period of time, but in no event can that security be held by the school district beyond 60 days from the time the award is made. (PCC 20111)
 - 5) Requires procurement bid solicitations and awards made by a school district approved to operate at least one federal nonprofit child nutrition program for purchases in support of those programs to be consistent with the specified federal procurement standards. Requires these awards to be let to the most responsive and responsible party. Requires the price to be the primary consideration, but not the only determining factor. (PCC 20111)
 - 6) Specifies that the requirements of (1), above, apply to all equipment, materials, or supplies, whether patented or otherwise, and to other contracts awarded, as specified. Prohibits the requirements of (1) from applying to professional services or advice, insurance services, or any other purchase or service otherwise exempt as specified, or to any work done by day labor or by force account. (PCC 20111)
 - 7) Requires commencing January 1, 1997, the SPI to annually adjust the dollar amounts specified in (1), above, to reflect the percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the prior fiscal year. Requires the annual adjustments to be rounded to the nearest one hundred dollars (\$100). (PCC 20111)
 - 8) Authorizes, in each school district, the governing board to make repairs, alterations, additions, or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on the school grounds, erect new buildings, and perform maintenance, as defined, by day labor, or by force account, whenever the total number of hours on the job does not exceed 350 hours. Authorizes, in any school district having an ADA of 35,000 or greater, the governing board to, in addition, make repairs to school buildings, grounds, apparatus, or equipment, including painting or repainting, and perform maintenance, as defined, by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours, or when the cost of material does not exceed \$21,000. (PCC 20114)
 - 9) Authorizes, notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, any local agency to require that a contract be awarded to the lowest responsible bidder who also does either of the following:

- a) Meets goals and requirements established by the local agency relating to participation in the contract by minority business enterprises and women business enterprises. Requires, if the bidder does not meet the goals and requirements established by the local agency for that participation, the local agency to evaluate the good faith effort of the bidder to comply with those goals and requirements, as specified; or
 - b) Makes a good faith effort, in accordance with the specified criteria, prior to the time bids are opened, to comply with the goals and requirements established by the local agency relating to participation in the contract by minority or women business enterprises. (PCC 2000)
- 10) Establishes the CUPCAA to help promote uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in the state. Requires the CUPCAA to only apply to a public agency whose governing board has by resolution elected to become subject to the uniform construction cost accounting procedures and which has notified the State Controller's Office (SCO) of that election. (PCC 22000-22045)
- 11) Defines "public project" to any of the following:
- a) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility;
 - b) Painting or repainting of any publicly owned, leased, or operated facility; and
 - c) In the case of a publicly owned utility system, "public project" shall include only the construction, erection, improvement, or repair of dams, reservoirs, powerplants, and electrical transmission lines of 230,000 volts and higher. (PCC 22002)
- 12) Defines "maintenance" to mean routine, recurring, and usual work for the preservation, protection, and keeping of any publicly owned or publicly operated facility for its intended purposes in a safe and continually usable condition for which it was designed, improved, constructed, altered, or repaired. (PCC 20115)

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, "California schools are struggling to build small-scale projects because of outdated and unrealistic bid limits. Projects like school gardens may be small, but they make a big impact on California's students. By making a reasonable inflation adjustment to the bid limits, we can ensure schools across the state can continue to provide learning environments and resources that benefit our kids."

Competitive bidding. The State of California requires competitive bidding for most public contracts. School districts are required to use competitive bidding under the following circumstances:

- 1) Public projects (which include construction, demolition, repair, and painting of any publicly owned, leased, or operated facility) are required to be competitively bid if they require an

expenditure of more than \$15,000 (not adjusted annually) unless an exception applies. School district governing boards are required to let the contract to the lowest responsible bidder who is required to give security as the board requires (which may include cash, cashier's check, bond, etc.), or else reject all bids. These contracts are sometimes referred to as "informal bids."

- 2) School districts are required to competitively bid any contracts which involve an expenditure of more than \$50,000 (adjusted annually by the CDE according to the Implicit Price Deflator; the rate for 2024 is \$114,500) for the lease or purchase of equipment, materials, supplies or services which do not constitute a "public project," which are not exempted from competitive bidding.

This bill proposes to increase the threshold for competitive bidding for public projects in school districts (informal bid) from \$15,000 to \$34,500. This bill also requires the SPI to annually adjust the threshold based on a specified index to reflect changes in cost over time. According to the author, the amount of \$34,500 was calculated by applying the specified index to the current threshold of \$15,000, which was last adjusted in 1984.

Work performed by school district employees. The State of California authorizes a school district to use their own employees to make repairs, alterations, additions or painting, repainting, or decorating upon school buildings, repair or build apparatus or equipment, make improvements on school grounds, erect new buildings and perform maintenance by day labor or by force account (the dollar value of labor, materials and equipment at the rate a public agency charges itself), whenever the total number of hours on the job does not exceed 350 hours, rather than contracting out.

If the school district has an ADA of 35,000 or more the school district may also make repairs to school buildings, grounds, apparatus or equipment, including painting or repainting and perform maintenance by day labor or by force account whenever the total number of hours on the job does not exceed 750 hours or when the cost of materials does not exceed \$21,000.

This bill would authorize a school district with an ADA of 35,000 or more to use day labor or force account when the cost of materials does not exceed \$43,000. This bill also requires the SPI to annually adjust the threshold based on a specified index to reflect changes in cost over time. According to the author, the amount of \$43,000 was calculated by applying the specified index to the current threshold of \$21,000, which was last adjusted in 1996.

Additional options for school districts with an ADA of more than 35,000 students. This bill proposes to create additional authorizations and thresholds for competitive bidding and work performed by school district employees for school districts in specified conditions. This bill authorizes a school district to adopt a resolution to evaluate the CUPCAA without electing to become subject to those procedures if the school district governing boards meets all of the following requirements: 1) the governing board has not already elected to be subject to the CUPCAA and notified the Controller, 2) the school district has an ADA of 35,000 or more, and 3) the governing board has entered into a PLA for all of its public works projects. If the school district meets all three criteria, then for one year following the adoption of the resolution the threshold for informal bidding will be \$220,000, and the threshold for force account will be when the hours do not exceed 750 hours or the cost of materials does not exceed \$70,000. At the end of the year, the governing board may elect to become subject to the CUPCAA. If the

governing board chooses not to elect to become subject to the CUPCAA, their thresholds would return to the limits prior to adopting the resolution (\$34,500 for informal bid, and \$43,000 for force account).

California Uniform Public Construction Cost Accounting Act. According to the State Controller's Office (SCO), the CUPCAA is legislation that was enacted in 1983 to help promote "uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public entities in the state" (PCC 22001). The CUPCAA is a voluntary program available to all public entities in the State, but it applies only to those public agencies that have "opted in" to the provisions, using the process outlined in the CUPCAA.

The CUPCAA allows for public project work in the amount of \$60,000 or less to be performed by a public agency's force account using the public agency's own resources, by negotiated contract, or by purchase order. Public projects in the amount of \$200,000 or less may use informal or formal bidding procedures set forth in the CUPCAA. Public projects at a cost of more than \$200,000 must use formal bidding procedures to let the contract.

Benefits of the program include an increased force account limit for public agencies, simplified bidding for projects that are \$200,000 or less, reduced number of formal bids based on project size; and expedited contracting for projects under \$200,000.

Many participating agencies utilize the program because it has given them more leeway in the execution of public works projects under a certain dollar amount; sped up the award process; expedited project delivery; reduced the time, effort, and expense associated with bidding projects under \$200,000; and simplified administration for those projects. Few agencies have experienced challenges with the accounting requirements and overhead provisions. Moreover, adjustments, when required, have been relatively simple; most required procedures were already in place, so there were few, if any, major changes to existing operations. The current Standard Accounting Codes Structure (SACS) satisfies reporting requirements when used properly.

Related legislation. AB 2192 (Juan Carrillo) of the 2023-24 Session would define "public project" to additionally include installations involving any publicly owned, leased, or operated facility. This bill would authorize public projects of \$70,000 or less to be performed by the employees of a public agency by force account, authorize public projects of \$100,000 or less to be performed by negotiated contract or by purchase order, authorize public projects of \$220,000 or less to be let to contract by informal procedures, and require public projects of more than \$220,000 to be let to contract by formal bidding procedures. The bill would permit the governing body of a public agency, in the event all bids received for the performance of that public project are in excess of \$220,000, to award the contract at \$235,000 or less to the lowest responsible bidder if it determines the cost estimate of the public agency was reasonable.

AB 2833 (Runner) of the 2005-06 Session would have allowed school districts to forgo competitive bidding of construction contracts of less than \$50,000, rather than the current threshold of \$15,000, and requires the SPI to adjust that amount annually to reflect inflation. Also would have required bidders on school contracts for goods, services, and construction to submit a pre-qualification form 15 days prior to the public bid opening, rather than the current 5 day requirement. This was held in the Assembly Business & Professions Committee.

SB 429 (Polanco), Chapter 897, Statutes of 1995, increases to \$50,000 the threshold above which school districts and community college districts must use competitive bids to award contracts for

the purchase of equipment, materials or supplies, repairs or services, except construction services, as specified. Sets a competitive bid threshold for school districts and community college districts for certain public construction projects at \$15,000. Authorizes maintenance and construction work to be performed by temporary or permanent employees in certain districts rather than contracting out if the work does not exceed 750 hours, or when the cost of material does not exceed \$21,000.

Arguments in support. The LAUSD writes, “In recent years, California witnessed the highest levels of inflation in a generation, and the construction industry was hit particularly hard. Since 2020 alone, the cost of labor and construction materials has increased by over 35%. For school districts, the real costs of school construction and maintenance have dramatically outpaced the Informal Bid and Force Account statutory thresholds that govern when schools must put construction projects out to bid and when they can use their own workforce for repairs. Many smaller school maintenance and construction projects face uncertainty because costs are too large to use the informal bid process, but too small to attract contractors to bid on. As a result, limits that were appropriate 40 years ago are now causing school districts to dramatically reduce the size and scope of planned schoolyard improvements or cancel them outright.

AB 2009 will increase the Informal Bid and Force Account limits in the Local Agency Public Construction Act for the first time since 1984 and 1996, respectively, and automatically adjust them for inflation in the future. This simple update will ensure that more students have access to safe and healthy learning environments, while creating jobs for the tradespeople who perform this work. Additionally, the bill would give school districts with a current project labor agreement and an average daily attendance of over 35,000 students the option to utilize the bid limits of the CUPCCAA for one year, as a means to evaluate the benefits of formally joining CUPCCAA.”

Arguments in opposition. The Western Electrical Contractors Association (WECA) writes, “AB 2009 will provide two important contracting options to school districts, but only if they have “entered into a PLA that will bind all contractors and subcontractors performing work on the project.” WECA believes this mandate is discriminatory and increases the cost of construction. A study published in August 2022 by the Rand Corporation found that a bond measure passed by LA area voters in 2016 failed to deliver its intended results, primarily because of a PLA. In addition, a PLA imposed on a \$5.9 million El Camino College construction project resulted in a new low bid of \$12.4 million!”

REGISTERED SUPPORT / OPPOSITION:

Support

Alameda County Office of Education
California Association of School Business Officials (CASBO)
California's Coalition for Adequate School Housing (CASH)
Kern County Superintendent of Schools Office
Los Angeles Unified School District

Opposition

Western Electrical Contractors Association

Analysis Prepared by: Marguerite Ries / ED. / (916) 319-2087