



County Engineers Association of California LEGISLATIVE PROPOSAL ACTION REQUEST FORM

Please return by Tuesday, August 14, 2018

NOTE: Please submit all proposals to CEAC through your Public Works Director or Department Head.

Member Name: Shane L. Silsby
County: Orange
Position: Director of Public Works
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(Please include a completed CSAC Legislative Proposal Worksheet)

Brief Description of Legislative Proposal:

Orange County Public Works is requesting the language in current state legislative authority, California PCC 20128.5, be amended to: (a) allow use of job order contracting (JOC) by counties for all projects including construction, and (b) eliminate annual procurement requirements, allowing multi-year contracts, not to exceed three million dollars (\$3,000,000) plus California Consumer Price Index (CPI) (from the enactment of Section 20128.5), annually.

California Public Contract Code 20128.5 would be amended as follows:

Notwithstanding any other provisions of this article, the board of supervisors may award individual ~~annual~~ contracts, none of which shall exceed three million dollars (\$3,000,000) **for each contractual year, and** adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work, **or construction**, to be done according to unit prices. ~~No annual contracts may be awarded for any new construction.~~ The contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. ~~No project shall be performed under the contract except by order of the board of supervisors, or an officer acting pursuant to Section 20145.*~~ The board of supervisors may authorize a county officer to fully administer contracts pursuant to Section 20145 (as modified with population to 3,000,000).

(Continued on next page)

Please return completed Legislative Proposals to Nick Cronenwett at ncronenwett@counties.org with the email subject heading "CEAC 2019-2020 Legislative Proposal Submission"

For purposes of this section, "unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.

For purposes of this section, "repair, remodeling, or other repetitive work, **or construction**, to be done according to unit prices" shall not include design or contract drawings.

*($\$3,000,000$ plus CPI calculated annually according to effective date of January 1, 1998)

K:\CEAC Files\Leg Priorities\2019-2020 Priorities



LEGISLATIVE PROPOSAL WORKSHEET

I. SUMMARY

- (1) Give a one or two sentence summary of the proposal.

Orange County Public Works is requesting the language in current state legislative authority, California PCC 20128.5, be amended to: (a) allow use of job order contracting (JOC) by counties for projects including construction, (b) eliminate the annual procurement requirements for such contracts by allowing multi-year contracts, not to exceed three million dollars (\$3,000,000) plus California Consumer Price Index (CPI) (from the enactment of Section 20128.5), annually, and (c) modify the population in California PCC 20145 to 3,000,000 or more. JOC contracts are awarded to the lowest responsible bidder based on plans and specifications for typical work.

A job order contract (JOC), sometimes referred to as a "unit price" contract, is a firm fixed price, competitively bid, indefinite quantity contract designed to accomplish a number of small to medium projects under a single master contract.

II. BACKGROUND INFORMATION

A. Problem

- (1) What problem does the proposal address? Give specific facts and examples to illustrate the problem.

The traditional Design-Bid-Build (DBB) method of project procurement and delivery requires a significant investment of staff time, multiple contracts/contractors, and is subject to many contract modifications/extensions and accompanying cost overruns. The cost impact for OCPW to procure each individual board approved contract is approximately \$100,000. Authorizing counties to use JOC for multi-year contracts can save hundreds of thousands of dollars. Additional benefits include accelerated completion of projects, and reduction of construction contracting complexity. Since JOC contractors are asked to perform a series of projects one after the other, the prospect of additional work keeps the contractor motivated to provide timely, responsive, and high quality work. In addition, the multi-year contract would eliminate discontinuity between annual contract agreements and enable counties to foster longer-term relationships with contractors. Counties need the right tool for the right project. Allowing alternative delivery methods for construction projects give counties the ability to make the most cost-effective and advantageous decision for a particular project.

- (2) Does the proposal address a problem of statewide significance? Give specific facts and examples, which demonstrate a statewide need for the proposal.

This proposal would allow counties statewide to complete numerous, commonly encountered construction work quickly and easily through multi-year umbrella JOC contracts. This alternative project delivery methodology reduces unnecessary levels of contract procurement time and costs. Los Angeles Unified School District reports a 9.3% cost savings and a 50% reduction in procurement time by using JOC. Other independent studies state JOC can save up to 90% in procurement time from project identification to completion. A project can start as quickly as within a month. For construction work that ensures and increases safety, this quick procurement and execution is essential. Examples of this may be a sidewalk gap closure, installation of ADA upgrades, or storm drain installation.

- (3) Have counties been involved in any litigation regarding this problem? If so, cite the case

We are not familiar with any litigation involving PCC 20128.5.

- (4) What other source materials, case law, or data, document the existence of the problem (e.g. periodicals, government agency reports, private studies, law review articles, newspaper articles)?

NACo's article states that counties and other government agencies have turned to JOC as a way to respond to emergency construction needs quickly without incurring a hefty price tag. "JOC enables qualified, readily-available contractors to get started quickly in a crisis."

<http://www.naco.org/blog/dealing-disaster-job-order-contracting-emergency-response-projects>.

There is an Attorney General opinion from 1993 further defining the limits of PCC 20128.5 - 76 Ops. Cal. Atty. Gen. 126.

Washington State Legislature allows for JOCs to be executed for an initial contract term of not to exceed two years, with the option of renewing for one year. RCW 39.10.440

Texas Government Code 2269 allows JOC for minor new construction. KBR Inc. won a multi-year JOC in Dallas to provide construction services at various municipal facilities. The contract is initially for two years with an option of 3 one-year renewals.

AB 618 (Low) allows community college districts to use JOC for similar projects already authorized for K-12 school districts, such as small construction projects. It allows for JOCs to be renewed or extended.

The Judicial Council of California has selected JOC as a means of completing facility repair, alteration, and minor new construction projects.

B. Interested Parties

- (1) What counties, organizations or individuals are interested in the problem?

Orange County Public Works, Los Angeles County, San Diego County

- (2) What counties, organizations or individuals would be sources of information about the problem?

Orange County Public Works, Los Angeles County, San Diego County, CSAC

- (3) Who would be likely to support/oppose the proposal? Why?

Counties would be supportive of this amendment. It is a local government efficiency and cost savings proposal.

Smaller local workers and contractors would be able to procure more business with counties. Agencies could be exposed to additional disadvantaged businesses like small businesses or women owned businesses.

- (4) Identify groups or other governmental agencies that could be affected by the proposal, either favorably or adversely? Please Discuss.

There could be potential resistance from local labor unions. However, early discussion with local labor unions in other alternative delivery methods, such as Construction Manager at-Risk and Design Build have proven effective.

III. PROPOSAL

A. Existing Law

- (1) What are the statutory provisions currently applicable to the proposal?

Current code (PCC Section 20128.5 of Chapter 1 of Part 3 of Division 2, Article 3.5 Counties) does not allow counties to use JOC with multi-year contracts or for new construction projects.

Current Statute

California Public Contract Code 20128.5. Notwithstanding any other provisions of this article, the board of supervisors may award individual annual contracts, none of which shall exceed three million dollars (\$3,000,000), adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for any new construction. The contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. No project shall be performed under the contract except by order of the board of supervisors, or an officer acting pursuant to Section 20145.

For purposes of this section, "unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.

For purposes of this section, "repair, remodeling, or other repetitive work to be done according to unit prices" shall not include design or contract drawings.

(2) What case law is relevant to this issue? Please summarize and cite.

Current law (PCC Section 20128.5 of Chapter 1 of Part 3 of Division 2, Article 3.5 Counties)
Please see III(A)(1) above.

(3) Why is existing law inadequate to deal with the problem?

Current code (PCC Section 20128.5 of Chapter 1 of Part 3 of Division 2, Article 3.5 Counties) does not allow counties to use JOC with multi-year contracts or for new construction projects.

B. Suggested Legislation

(1) Describe the specific bill proposal.

Current law (PCC Section 20128.5 of Chapter 1 of Part 3 of Division 2, Article 3.5 Counties) does not provide counties to use JOC for new construction projects or with multi-year contracts.

Current Statute

California Public Contract Code 20128.5

Notwithstanding any other provisions of this article, the board of supervisors may award individual annual contracts, none of which shall exceed three million dollars (\$3,000,000), adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for any new construction. The contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. No project shall be performed under the contract except by order of the board of supervisors, or an officer acting pursuant to Section 20145.

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For purposes of this section, "repair, remodeling, or other repetitive work to be done according to unit prices" shall not include design or contract drawings.

Proposed Amendment

California Public Contract Code 20128.5 would be amended as follows:

Notwithstanding any other provisions of this article, the board of supervisors may award individual annual contracts, none of which shall exceed three million dollars (\$3,000,000) **for each contractual year, and** adjusted annually to reflect the percentage change in the California Consumer Price Index, for repair, remodeling, or other repetitive work, **or construction**, to be done according to unit prices. ~~No annual contracts may be awarded for any new construction.~~ The contracts shall be awarded to the lowest responsible bidder and shall be based on plans and specifications for typical work. ~~No project shall be performed under the contract except by order of the board of supervisors, or an officer acting pursuant to Section 20145.*~~ The board of supervisors may authorize a county officer to fully administer contracts pursuant to Section 20145 (as modified with population to 3,000,000).

For purposes of this section, "unit price" means the amount paid for a single unit of an item of work, and "typical work" means a work description applicable universally or applicable to a large number of individual projects, as distinguished from work specifically described with respect to an individual project.

For purposes of this section, "repair, remodeling, or other repetitive work, **or construction** to be done according to unit prices" shall not include design or contract drawings.

(Contract limits including CPI shall be calculated from the enactment of Section 20128.5.)

Additionally, Section 20145 should be modified with changes to the stated population and contract limit threshold.

(2) Do similar provisions exist in other California laws?

AB 618 (Low, 2018) – JOC available to community college districts for smaller projects including construction

AB 14 (Horton, 2003) – JOC available only to Los Angeles Unified School District

AB 1431 (Gomez, 2015) – JOC available to all school districts construction projects

AB 2580 (Furutani, 2012) – JOC available to public works projects in LA Unified School District

SB 793 (Hill, 2017) – Adds best value for procurements including JOC for pilot counties

(3) Describe a hypothetical application of the proposal.

With the addition of "construction" in PCC Section 20128.5, counties will be able to utilize JOC to quickly and cost-effectively enhance and ensure the safety and mobility of their residents. Projects such as the following may now begin construction much sooner:

- construction of a bathroom within the park
- installation of concrete sidewalks to eliminate gaps in walk paths
- improvements to a street intersection
- installation of storm drains
- completion of ADA upgrades
- installation of new concrete sidewalks or trails throughout a county park
- utility relocations

With the authority to procure multi-year contracts, counties will be able to utilize the same JOC for a number of projects over multi-years. This saves procurement time and counties money by not needing to solicit bids every year. For example, a JOC contract for Firm A is awarded for \$4.8 million dollars and used for multiple task orders. These task orders consume the entire JOC in the first six months after issuance. The procurement team now needs to begin working on a new solicitation which takes about 6 months' time to complete. The cost impact for our county is approximately \$100,000 and results in a very similar list from the previous year given that the nature of the work varies minimally. An example of a typical county project task is pavement and the pavement JOCs are very similar year to year.

C. Fiscal Impact

- (1) Would there be any potential fiscal impact on counties under the proposal? If so, describe.

The ability for counties to use the JOC method for construction would allow for procurement, construction, and delivery of the project earlier and for less cost than comparable DBB projects. Authorization of multi-year contracts could save counties the cost of procuring and soliciting contracts on an annual basis, especially when the solicitation usually ends with a very similar list of contractors, firms and vendors from the previous year. The cost for the County of Orange to complete the procurement process is approximately \$100,000 for this type of contract.

- (2) Would there be any potential financial impact on other persons or organizations, public or private?

No, we do not foresee any potential financial impact on others. This solution provides cost savings combined with greater efficiency.

D. History

- (1) Has this proposal ever been introduced in the Legislature? If so, what was the bill number and why did it fail?

OC Public Works has not presented this proposal in the Legislature previously.

- (2) Is judicial or executive branch resolution of the problem possible? Explain.

Unknown

E. Public Policy

- (1) What are the public policy reasons in support of this proposal? Against?

Support -

The JOC method would be an additional tool for counties' business needs for procurement and delivery of construction work. It would enable counties to complete work more cost-effectively and quickly through multi-year contracts. This methodology reduces unnecessary levels of contract procurement time and costs. In addition, the multi-year contract would eliminate discontinuity between annual contract agreements and enable the agency to foster longer-term relationships with contractors. It incentivizes contractors to complete high quality work in a timely manner in order to secure more business with the next job order.

The JOC method also allows for local workers and contractors to contract business with the county on a greater number of projects. Agencies can be exposed to disadvantaged businesses like small or women owned businesses.

Against -

There could be potential resistance from local labor unions. However, early discussion with local labor unions in other alternative delivery methods, such as Construction Manager at-Risk and Design Build have proven effective.

- (2) Would any related public policy be affected by this proposal? If so, describe.

Besides PCC Section 20128.5, no other public policy codes would be affected at this time.

