

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2039 (Luz Rivas) – As Amended April 25, 2022

**SUBJECT:** Los Angeles County Metropolitan Transportation Authority: job order contracting: pilot program.

**SUMMARY:** Authorizes the Los Angeles County Metropolitan Transportation Authority (LA Metro) to enter into job order contracts (JOCs). Specifically, **this bill:**

- 1) Authorizes LA Metro, notwithstanding any other applicable procurement requirements, to use the procurement method outlined in this bill for JOCs.
- 2) Prohibits LA Metro from contracting for work that is protected by applicable collective bargaining agreements. All JOCs shall comply with all LA Metro collective bargaining agreements.
- 3) Requires JOCs of LA Metro to be competitively bid and awarded to bidders providing qualified responsive bids.
- 4) Requires JOCs to be for construction that is repetitive, for repair, or for renovation or modification, to be done according to unit prices.
- 5) Requires solicitations for JOCs to progress as follows:
  - a) LA Metro shall prepare a set of solicitation documents for JOCs. The documents shall include a unit price catalog or other established unit prices, JOC terms, JOC technical specifications, and any other information LA Metro deems necessary to adequately describe LA Metro's needs.
  - b) An architect, engineer, consultant, or contractor retained by LA Metro to assist in the development of the JOC solicitation documents shall not be eligible to bid or to participate in the preparation of a JOC bid or job order bid related to that solicitation.
  - c) LA Metro may award multiple JOCs in response to a single JOC solicitation.
- 6) Requires LA Metro to develop a system for evaluating JOC bids for award of JOCs.
- 7) Requires the award of a job order under a JOC to progress as follows:
  - a) LA Metro shall prepare a request for bids for specific job orders based on the solicitation documents prepared under the solicitation process that invites job order contractors to submit sealed bids in the manner prescribed by LA Metro.
  - b) 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.

- c) The job order contractor's bids for job orders shall identify any subcontractors to be used for the performance of the JOC.
  - d) The award of job orders, if any, shall be made to a job order contractor or to job order contractors that LA Metro determines to be qualified and responsive based upon preestablished criteria to be determined by LA Metro. However, LA Metro, by a process determined by LA Metro, may award any job order for repair or renovation work with a value equal to or less than two \$250,000 to a job order contractor that is also a certified small business enterprise (SBE), as established by LA Metro's SBE certification process or any similar certification process acceptable to LA Metro, or to a job order contractor that is also a disabled veterans business enterprise (DVBE), as certified by the Department of General Services (DGS).
  - e) The job order contractors shall comply with LA Metro's project labor agreement (PLA), as applicable.
- 8) Provides that the maximum total dollar amount that may be awarded under a single JOC shall not exceed \$15 million dollars in the initial contract term of the JOC. No single job order may exceed \$5 million.
  - 9) Provides that JOCs may be executed for a contract term of no more than 24 months and may be extended or renewed at LA Metro's discretion.
  - 10) Prohibits work from being split or separated into smaller job orders for the purpose of evading the cost limitation provisions of this bill.
  - 11) Provides that all work bid under JOCs shall comply with the Subletting and Subcontracting Fair Practices Act and is subject to all of the penalties and provisions set forth in that Act.
  - 12) Requires, if a job order contractor chooses to use a subcontractor, the job order contractor to verify that the subcontractor possesses and maintains the appropriate licenses and credentials required.
  - 13) Provides that, if LA Metro, after conducting an administrative due process review, determines that there has been a violation of the Subletting and Subcontracting Fair Practices Act, including, but not limited to, bid shopping by the job order contractor, LA Metro may terminate the job order, declare the contractor ineligible for future job orders for a period of time to be determined by LA Metro, or withdraw authorization for the contractor to proceed with awarded work.
  - 14) Requires a JOC to set forth in the general conditions of the JOC the party or parties responsible for seeing that existing law governing prevailing wages on public works projects [Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code] is complied with.
  - 15) Requires, for purposes of job order contracting, prevailing wages to apply to all work ordered under the JOC regardless of thresholds set forth in Section 1771.5 of the Labor Code.

- 16) Requires the job order contractor to pay the prevailing wage in effect at the time the job order is issued by LA Metro and all increases as published by the Department of Industrial Relations (DIR) for the term of the JOC, including all overtime, holiday, and shift provisions published by the DIR.
- 17) Requires LA Metro to 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 PLA.
- 18) Requires, in order to prevent fraud, waste, and abuse, LA Metro to prepare for each individual job order developed under a JOC an independent cost estimate. The estimate shall be prepared prior to the receipt of any job order contractor's bid for the work and shall be compared to the job order contractor's bid price to determine the reasonableness of that price before issuance of any job order. If LA Metro finds the job order contractor's bid to perform work for a given job order to be unreasonable, not cost effective, or undesirable, LA Metro may elect not to issue the job order to the job order contractor, and may, instead, utilize any other available procurement procedures or choose not to move forward with the work.
- 19) Requires LA Metro to submit to the appropriate policy and fiscal committees of the Legislature, on or before January 1, 2027, a report on the use of job order contracting under this bill. The report shall include, but shall not be limited to, all of the following information:
  - a) A description of LA Metro's system for evaluating JOC bids for award of JOCs, including, but not limited to, the criteria used by LA Metro to determine a qualified and responsive job order contractor.
  - b) A description of each JOC awarded and the contractor awarded the contract.
  - c) An assessment of the use of job order contracting under this bill.
- 20) Requires the report described above to be submitted in compliance with Section 9795 of the Government Code.
- 21) Provides a sunset date of January 1, 2028.
- 22) Contains a number of findings and declarations supporting its purposes.
- 23) Finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the need for a pilot program to determine the potential benefits of job order contracting to a large transportation agency without setting policy for smaller local agencies.

**EXISTING LAW:**

- 1) Requires, pursuant to the Local Agency Public Construction Act (LAPC Act), local officials to invite bids for construction projects and then award contracts to the lowest responsible bidder under the traditional design-bid-build project delivery system.

- 2) Authorizes certain state and local agencies to enter into JOCs, including counties, school districts, community college districts, the California State University, and the Department of Transportation through the Clean California State Beautification Program of 2021, as specified.

**FISCAL EFFECT:** None.

**COMMENTS:**

- 1) **Bill Summary.** This bill authorizes LA Metro to enter into JOCs on a competitive basis for construction that is repetitive, for repair, or for renovation or modification. The maximum total dollar amount that may be awarded under a single JOC shall not exceed \$15 million dollars in the initial contract term, and no single job order may exceed \$5 million. JOCs may be executed for a contract term of no more than 24 months and may be extended or renewed at LA Metro's discretion.

This bill prohibits LA Metro from contracting for work that is protected by applicable collective bargaining agreements, requires all JOCs to comply with all LA Metro collective bargaining agreements, and requires job order contractors to comply with LA Metro's PLA.

This bill also provides for specified subcontracting practices, the payment of prevailing wages, and labor compliance consistent with existing law, as specified. The bill also outlines the process for LA Metro to follow in soliciting and awarding JOCs, including the ability to award job orders of \$250,000 or less to SBE or DVBE contractors.

This bill requires LA Metro to submit to the appropriate policy and fiscal committees of the Legislature, on or before January 1, 2027, a report on its use of job order contracting, as specified. This bill provides a sunset date of January 1, 2028.

This bill is sponsored by LA Metro.

- 2) **Author's Statement.** According to the author, "As Los Angeles County Metropolitan Transportation Authority (LA Metro) continues to deliver critical transportation infrastructure projects. AB 2039 would help them deliver smaller construction projects by streamlining their procurement process, similar to authorities that exist at other agencies. Job order contracting (JOC) will allow LA Metro to more rapidly and efficiently deliver these construction projects. This measure will also allow LA Metro to better address local community contracting concerns such as providing contracting opportunities for small and emerging contractors in a geographic area to execute work providing contracting opportunities for small and emerging contractors to become JOC contractors."
- 3) **Job Order Contracting.** A JOC is a competitively bid, fixed price, indefinite quantity contract for the performance of minor construction, as well as the renovation, alteration, painting and repair of existing public facilities. A JOC is generally a multi-year contract that includes a base year and multiple "option years," and is awarded before the awarding agency has identified specific work that it needs the contractor to perform. A typical JOC involves a variety of tasks such as roofing, electrical work, plumbing and painting, that are required for all of a public agency's buildings for a period of years.

A JOC is a fixed price agreement in that it is based upon specified charges contained in a Unit Price Book (UPB), which is prepared by the public agency or by independent commercial sources. The UPB sets forth detailed repair and construction tasks, including task descriptions, specifications, units of measurement, and unit prices for each task (“Unit Price” means the amount paid for a single unit of an item of work). A contractor’s bid is expressed in terms of a percentage of the specified UPB charges. The UPB is then used to determine the costs of each proposed project during the term of the contract. As an example, if a procuring agency’s per unit catalog price for an HVAC installation is \$1,000, and a contractor submits a bid to do that work with an adjustment factor of 1.13, the contractor is agreeing to install the HVAC for \$1,130.

The total JOC value may be specified as a range with a certain guaranteed minimum. The award of annual contracts on a unit price basis enables what would otherwise be multiple separately-bid projects to be combined into one bid. This contracting method is intended to reduce costs and accelerate completion of smaller projects. It is not generally viewed as an appropriate method of contracting for large, complex construction projects that require extensive or innovative design or are likely to encounter changes and revisions during construction. JOC are typically used for well-defined, recurring or repetitive work where quick execution is essential, not for single larger projects.

The Legislature has authorized multiple agencies to use JOC, some state and some local, including counties, school districts, community college districts, the California State University system, and Caltrans. California counties have enjoyed the authority to use JOC since 1983. Counties may award annual JOCs of up to \$3 million, adjusted annually to reflect the California Consumer Price Index, to the lowest responsible bidder or using best value (for specified counties).

- 4) **Policy Considerations.** The Committee may wish to consider the following:
- a) **JOC Authorization for Counties and Other Agencies.** The Legislature has authorized a number of other agencies to use job order contracting. For counties (and for some other agencies), several limitations exist:
    - i) JOC may not be used for new construction.
    - ii) JOCs are limited to \$3 million for an initial term, with the ability to extend for two additional annual terms and a maximum of \$6 million over those two terms. These dollar amounts may be adjusted annually to reflect the percentage change in the California Consumer Price Index.
    - iii) Initial contract terms are limited to 12 months.
    - iv) For school districts and community college districts, any single job order is limited to \$1 million.

The sponsor states, “AB 2039 would help us deliver these projects by streamlining our procurement process, *similar to authorities that exist at other agencies.*” The Committee may wish to consider amending this bill to bring its provisions in line with the limitations in other JOC statutes outlined above.

- b) **Job Order Contract vs. Job Order.** This bill contains several provisions specifying bids (or related processes) applicable to *job orders*, rather than job order *contracts*. Under job order contracting, individual job orders are not subject to bidding – the overall job order *contract* is bid. The Committee may wish to consider if the language in this bill should be clarified accordingly.
  - c) **Notwithstanding Clause.** This bill provides that LA Metro may use the procurement method outlined in this bill for JOCs, *notwithstanding any other applicable procurement requirements*. It is not clear why this clause is necessary and whether it could relieve LA Metro from procurement requirements it should otherwise follow, whether or not a contract is a JOC. The Committee may wish to consider striking this clause from the bill.
- 5) **Committee Amendments.** The Committee may wish to amend this bill to address the policy considerations noted above as follows:
- a) Clarify that JOC shall not be used for any new construction.
  - b) Limit any JOC to \$5 million for an initial term, with the ability to extend for two additional annual terms and a maximum of \$10 million over those two terms.
  - c) Limit the initial contract term to 12 months, instead of 24 months.
  - d) Limit any single job order to \$1 million.
  - e) Allow the dollar amounts specified above to be adjusted annually to reflect the percentage change in the California Consumer Price Index.
  - f) Reflect that bids are executed for job order *contracts*, and not individual job orders.
  - g) Strike the notwithstanding clause from the bill.
- 6) **Related Legislation.** SB 1366 (McGuire) bill authorizes the Department of General Services (DGS) to engage in job order contracting as an alternative procurement procedure for certain public works projects, until July 1, 2027.
- 7) **Previous Legislation.** SB 793 (Hill), Chapter 627, Statutes of 2017, allowed specified counties to use the best value construction contracting method to award JOCs for up to \$3 million, adjusted for inflation.
- SB 744 (Hughes), Chapter 431, Statutes of 1997, increased the annual maximum contract amount that counties may award for county JOCs from \$1 million to \$3 million.
- AB 680 (La Follette), Chapter 164, Statutes of 1983, authorized counties to award annual JOCs of up to \$1 million.
- 8) **Arguments in Support.** LA Metro, sponsor of the bill, writes, “Metro is working aggressively to deliver transit infrastructure projects to help Los Angeles County meet the transportation needs of Los Angeles County’s 10 million residents. AB 2039 would help us

deliver these projects by streamlining our procurement process, similar to authorities that exist at other agencies. Job order contracting allows for a more efficient procurement process and will enable Metro to rapidly and efficiently address smaller construction projects at our properties.”

9) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Los Angeles County Metropolitan Transportation Authority [SPONSOR]  
The Gordian Group (if amended)

**Opposition**

None on file

**Analysis Prepared by:** Angela Mapp / L. GOV. / (916) 319-3958