

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2763 (Kalra) – As Introduced February 18, 2022

SUBJECT: Santa Clara Valley Transportation Authority: job order contracting.

SUMMARY: Authorizes the Santa Clara Valley Transportation Authority (VTA) to enter into job order contracts (JOCs). Specifically, **this bill:**

- 1) Allows VTA, notwithstanding any other law, to enter into a JOC.
- 2) Prohibits VTA from entering into a JOC for new construction.
- 3) Requires VTA to only enter into a JOC with the lowest responsible and responsive bidder, based on the bidder's plans and specifications for typical work.
- 4) Prohibits a single JOC from exceeding \$5 million in the first term of the JOC and, if extended or renewed, \$10 million over the maximum of two extended terms of the JOC.
- 5) Requires, beginning January 1, 2024, the dollar-value limits specified in this bill to be annually adjusted to reflect the percentage change in the California Consumer Price Index (CPI).
- 6) Allows VTA to execute a JOC for an initial contract term of no more than 12 months, with the option of extending or renewing the JOC for two additional 12-month periods. An extension or renewal shall be priced as provided in the invitation for bids. An extension or renewal shall be mutually agreed to by VTA and the contractor pursuant to the JOC.
- 7) Requires the JOC to specify that its term will not exceed the contract term or the date that the maximum value of the contract is achieved, whichever is earlier.
- 8) Provides the following definitions for the purposes of this bill:
 - a) "Job order contract" means an indefinite-quantity contract for repair, remodeling, or other repetitive work to be done according to unit price.
 - b) "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.
 - c) "Unit price" means the amount paid for a single unit of an item of work.
- 9) Contains a number of findings and declarations supporting its purposes.

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 VTA to enter into JOCs with the lowest responsible and responsive bidder for repair, remodeling, or other repetitive work. VTA may execute a JOC for an initial contract term of no more than 12 months, with the option of extending or renewing the JOC for two additional 12-month periods, if mutually agreed to by VTA and the contractor.

The maximum total dollar amount that may be awarded under a single JOC shall not exceed \$5 million dollars in the first term of the JOC and, if extended or renewed, \$10 million over a maximum of two extended terms. Beginning January 1, 2024, these dollar-value limits shall be annually adjusted to reflect the percentage change in the California CPI.

This bill prohibits VTA from entering into a JOC for new construction, and requires the JOC to specify that its term will not exceed the contract term or the date that the maximum value of the contract is achieved, whichever is earlier.

This bill is sponsored by VTA.

- 2) **Author's Statement.** According to the author, "Job order contracting (JOC) can reduce procurement time and costs associated with putting projects to bid. It is typically used for unplanned, but foreseeable maintenance projects. By authorizing JOC for VTA, AB 2763 will increase efficiency and accelerate the completion of smaller projects, allowing VTA facilities to remain in a state of good repair for the benefit of its riders."
- 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.** Generally speaking, when JOC has initially been authorized for other agencies, there has been a sunset provision to provide an automatic mechanism for the Legislature to review the use of the method by the contracting agency. The Committee may wish to consider adding such a provision to this bill.
 - b) **Notwithstanding Clause.** This bill allows VTA to enter into a JOC, *notwithstanding any other law*. It is not clear why this clause is necessary and whether it could relieve VTA from procurement, labor compliance, or 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) Add a sunset date of January 1, 2028.
 - b) Strike the notwithstanding clause from the bill.
- 6) **Related Legislation.** SB 1366 (McGuire) authorizes the Department of General Services 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.** VTA, sponsor of the bill, writes, “JOC is a project delivery method designed to accelerate the completion of smaller maintenance projects at lower costs by streamlining some of the requirements of the contracting process without compromising quality, the integrity of the bidding process or compliance with labor laws. In this regard, AB 2763 would speed the delivery of certain maintenance activities that VTA contracts firms to deliver, related to the maintenance of its facilities, including its light rail system, to ensure they remain in a state of good repair.

“Currently, construction contracts under VTA’s maintenance program typically follow a design-bid-build delivery model. The design-bid-build process often requires additional time and extra administrative costs related to advertising contracts, selecting a contractor, and administering construction activities. The JOC method, while still competitive, would enable VTA to accomplish many repairs, renovation, demolition, refurbishment, and maintenance projects based on a unit cost, with unspecified quantities and at non-predetermined locations. By establishing fixed costs for set units of work, JOC reduces the time and expenses. AB 2763 will increase efficiency and accelerate the completion of smaller projects that would otherwise be delayed by a traditional bidding process.”

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

REGISTERED SUPPORT / OPPOSITION:

Support

Santa Clara Valley Transportation Authority [SPONSOR]
The Gordian Group (if amended)

Opposition

None on file

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