

MOTION BY SUPERVISORS SHEILA KUEHL
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October 31, 2017

On June 14, 2016, the Board of Supervisors instructed the Chief Executive Officer (CEO), in conjunction with the Auditor-Controller (Auditor) and certain County departments and agencies, to conduct an in-depth audit of the County's use and administration of Job Order Contracts (JOCs). On April 17, 2017, after an extensive effort, the Auditor submitted the requested report and analysis, with 33 recommendations for improvements in the oversight of JOC procurement, administration and evaluation.

The California Public Contract Code (PCC) allows counties with a population of 2,000,000 or greater to use their own employees (a) for alteration or repair of County-owned buildings, if the cost of the work is under \$50,000, or (b) for new construction, if the cost of the work is under \$10,000. Any project that exceeds these "Force Account" thresholds must be performed by an outside entity, usually a construction firm, to be competitively procured through a public solicitation process, under the specific requirements of the PCC.

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JOCs are competitively procured "as-needed" construction contracts authorized by the Public Contract Code in which the County conducts a single up-front solicitation and utilizes the awarded JOC agreements to issue contractual work orders for individual projects during the 12-month term of the JOC. JOCs enable County departments to quickly and easily deliver projects involving repair, alteration, remodeling and refurbishment of buildings, structures or roadways, using private construction firms, without the need to conduct a formal solicitation for each individual project. JOC work orders can be as small as \$5,000 and as large as \$4.7 million, the current annual JOC maximum under the PCC. The project planning process, however, should afford County departments with some flexibility in making recommendations to the Board about appropriate JOC project limits on a per-project basis, depending on the applicable facts and circumstances of each project. Under JOC solicitations, contractors propose a bid factor against established unit prices (the Construction Task Catalog, sometimes also called the Unit Price Book) for 250,000+ routine tasks, products and improvements that are tailored to the Los Angeles County market. Contractors agree to perform such work at the prices listed in the Construction Task Catalog, adjusted (i.e., multiplied) by their bid factor. In some cases, particularly for specialty construction JOCs, the bid factor can be greater than 1.00. The responsive contractor with the lowest bid factor, if deemed to be "responsible" under the terms of the PCC, will be recommended for the JOC award. For example, if the total itemized cost of a rehabilitation project is \$100,000, according to the specified Construction Task Catalog, and a JOC contractor has a bid factor of 0.62, then the contractor is obligated to perform the project for \$62,000.

Projects issued under JOCs fall into two broad categories: (1) projects that involve work subject to the Public Contract Code (i.e., repair, alteration, remodeling or refurbishment of buildings, structures and roadways), and (2) projects that involve work not subject to the Public Contract Code, such as maintenance of buildings and structures. This latter type of JOC work order, sometimes referred to as an “indefinite quantity unit price contract,” is used primarily by the Internal Services Department (ISD) and to a lesser extent, other County departments and agencies. Specific rules and requirements on contracting, reporting and delegated authority for projects subject to the PCC do not apply to projects that are not subject to the PCC. For all practical purposes, however, the County should administer and oversee all Job Order Contracts using one consistent framework, unless otherwise prohibited by law or regulation, as with certain Community Development Commission / Housing Authority (CDC/HA) programs and funding streams.

Over the three-year period that includes Fiscal Years 2013-14, 2014-15 and 2015-16, the County saw average bid factors of 0.56 at the Department of Parks and Recreation (DPR), 0.61 at ISD (i.e., 61% of expected costs), 0.66 at the Department of Public Works (DPW) and 0.69 at the CDC/HA, with individual winning bid factors as low as 0.49 and as high as 0.99. According to the Auditor’s April 2017 report, the County’s JOC consultant, the Gordian Group, considers any bid factor below 0.80 to be low and states that “contractors may be unable to make a profit at that level.” This suggests that JOC contractors might be inclined to inflate their proposals for individual JOC work orders, by assuming excessive quantities of materials, items and/or labor, in order to compensate for underbidding.

As of July 1, 2017, the Board of Supervisors has authorized four departments and agencies to utilize JOCs: (1) DPW, with \$120.4 million in JOC work orders issued in the last three fiscal years, (2) ISD, with \$90.5 million in work orders issued, (3) the CDC/HA, with \$27.7 million in work orders issued and (4) DPR, with \$22.4 million in work orders issued. Over the same three-year period, the County issued a total of \$260.0 million in JOC work orders, with an average annual total of \$87.0 million.

DPW, ISD and the CDC/HA manage JOC agreements for their projects and on behalf of other client departments, primarily for facility remodeling, rehabilitation and deferred maintenance, and DPR manages its own JOCs, which are procured on their behalf by DPW. JOC contracting is efficient from a time and solicitation perspective, but requires active management, due diligence and proper controls from the solicitation to the construction planning, implementation and closeout lifecycle.

The Auditor's April 17, 2017, report identified serious deficiencies in departments' controls over the review and approval of contractor price proposals and recommended that "County management ... significantly increase its oversight of the County's JOC program." The Auditor further noted that these deficiencies may have resulted in the County paying more for projects than was necessary and that they may have enabled contractors to "pad" or inflate cost proposals to compensate for their low winning bids on JOC solicitations.

In June of 2017, the Chief Executive Officer convened an interdepartmental Job Order Contract Working Group to prepare a response to the April 2017 Audit Report and to prepare an implementation plan for the Auditor's 33 recommendations. The Working Group consists of representatives of the CEO, County Counsel, DPW, DPR,

CDC/HA, ISD and Auditor, and more recently, the Fire District. The Working Group, under the CEO's leadership, plans to submit a Job Order Contract Audit Response in October of 2017 and has committed to implementing all of the Auditor's recommendations, except for requiring JOC-using departments to establish project limits or dollar value thresholds, beyond which management would be required to evaluate the appropriateness of completing a project through JOC or through a traditional solicitation.

The April 2017 Audit Report identified the following major deficiencies:

a. Negotiated Price Proposals. A JOC project typically includes a project bid package, where the department provides a general scope of work to the contractor, then the contractor responds with a price proposal, listing the products, services, labor hours and quantities needed to complete the job. In one notable case, a County project manager accepted a \$1.47 million price proposal for a project without verifying that it accurately reflected the products and services needed for the project. The Auditor found evidence of Negotiated Price Proposals being approved at each of the four departments reviewed.

Working Group Response: The JOC Working Group has already discontinued the use of Negotiated Price Proposals in JOC-utilizing departments, will reinforce price proposal review processes and will monitor for compliance.

b. Non Pre-Priced Items / Lump Sum Bids. The County's JOC contractors are required to use our Construction Task Catalog when costing out projects. In some cases, however, JOC contractors propose using specialized Non Pre-Priced items for projects or they include vague or lump-sum descriptions of items, which makes it

impossible to verify quantities, labor hours or costs. On these occasions, some departments pay for Non Pre-Priced Items at the contractor's cost or with some negotiated markup, and some use the more appropriate "Live Book" method, which was developed by DPW and involves amending the Construction Task Catalog to include the new item, then applying the contractor's bid factor to it. Use of Non Pre-Priced items varied among the departments examined in the audit, from a low of 3.79% to a high of 30.29% of total JOC project costs. In one example of Lump Sum bids, a contractor submitted a one-line project price proposal for \$787,750, for "all plumbing and plastering" on a project, which was later approved by the department.

Working Group Response: The JOC Working Group has implemented the Live Book method to price Non Pre-Priced items, with the application of the appropriate bid factor, and has discontinued the use of Lump Sum project proposals.

- c. **Policies and Procedures.** Of the four departments reviewed, only DPW had formal JOC policies and procedures that were approved by management. DPR and ISD had draft policies and procedures that had not yet been approved by management and the CDC/HA did not have formal policies and procedures, but did have a training and reference manual, produced by the County's JOC consultant. The Auditor noted that JOC procedures were not consistent across departments and did not always include key controls or clearly defined responsibilities. The County should not be spending \$87 million per year on JOCs without consistent and clear policies and procedures.

Working Group Response: The JOC Working Group has developed a set of guidelines based on the Auditor's recommendations, which will be common to all

departments. Additionally, each department will develop its own department-specific set of policies and procedures by January 31, 2018.

d. Contractor Performance Evaluation. The Public Contract Code allows for limited consideration of contractor quality in the awarding of JOCs, which must be awarded to the “lowest responsive and responsible” bidder. In this case, State law defines a “responsible bidder” as one “who has demonstrated the attribute of trustworthiness, as well as quality, fitness, capacity, and experience to satisfactorily perform the public works contract.” The Auditor, however, reported that departments do not routinely consider a contractor’s prior performance on County contracts when evaluating a bid for JOC awards. Doing so would allow a department to make a determination of “contractor non-responsibility,” if warranted, and to disqualify a lowest-bid contractor with demonstrated performance issues.

Working Group Response: The JOC Working Group is researching this issue and is working with County Counsel to determine an appropriate option for consistent contractor performance evaluation that complies with the PCC and allows for appropriate due process.

The County of Los Angeles has an ongoing need for repair, alteration, modernization and rehabilitation of buildings, structures and roadways and is likely to continue to spend \$80 million to \$100 million per year on these projects and tasks. The County is likely to increase JOC spending, as well, by up to an additional \$200 million per year, starting in FY 2018-19, once the CEO’s Asset Management Division completes its first-ever Countywide Deferred Maintenance Inventory, with at least \$1 billion in deferred maintenance project needs expected. The County cannot, however,

continue prioritizing speed and expedience over quality control and due diligence in the administration of JOCs.

WE, THEREFORE, MOVE that the Board of Supervisors direct the Chief Executive Officer, in consultation with the other members of the Job Order Contract Working Group, including the Director of Public Works, the Director of Internal Services, the Director of Parks and Recreation, the Acting Director of the Community Development Commission, County Counsel and the Auditor-Controller to:

1. Submit eight quarterly reports, one per quarter for the next two years, to the Board of Supervisors (Board) on the implementation status of the 33 recommendations from the Auditor's April 17, 2017 report and the items included in this motion;
2. Provide feedback and recommendations, in the first quarterly report, on incorporating some or all of the 12 recommendations from ISD's May 4, 2017, report on Job Order Contracting Best Practices into the implementation plan and quarterly monitoring reports;
3. Develop a policy statement, to be distributed to all current and future JOC contractors, that outlines:
 - a. The County's expectations on quality assurance and performance standards for work performed under JOC authority,
 - b. The County's uniform contractor evaluation protocol, which all JOC-utilizing departments will be required to use to evaluate contractors' performance on JOC work orders over a certain de minimus threshold, to be determined by the JOC Working Group;

- c. The County's intention to use this information, which may be memorialized in the County's Contractor Alert Reporting Database, in future bid review and contract award processes, including for findings of contractor non-responsibility, to the extent allowable under the law.
4. Ensure that all County departments and agencies adhere to consistent practices with regard to delegated authority and reporting for JOC work orders that are subject to the Public Contract Code as well as those that are not. Delegated authority and reporting standards should be applied to all Job Order Contracts awarded after today's date and reflect:
- a. Granting departments delegated authority to issue work orders for projects costing up to \$75,000, as allowed under the Public Contract Code, with adoption of the appropriate ordinances;
 - b. Requiring Board notification, one week in advance, for all work orders in excess of \$150,000 on projects that are not subject to the Public Contract Code (e.g., maintenance projects), unless prohibited by law, regulation or funding source.
 - c. Allowing a waiver of Item 4(b) above for work orders to address emergency or critically-needed deferred maintenance projects, with Board notification no later than 24 hours after the work order is executed.

WE FURTHERMORE MOVE that the Board of Supervisors:

1. Instruct the Chief Executive Officer and the County's Legislative Advocates in

Sacramento to amend the County's legislative agenda, and to sponsor and advocate for the enactment of legislation:

- a. That would enable the County to use qualitative and/or quality criteria in awarding Job Order Contracts, including "Best Value Selection," which uses non-price factors such as quality, performance history and expertise for contractor selection; and
 - b. That would adjust the current force account limit for alteration or repair of County-owned buildings from \$50,000 to \$150,000, with an annual Consumer Price Index (CPI) adjustment.
2. Instruct the Director of Internal Services, working in consultation with the Chief Executive Officer, the Director of Personnel and County Counsel, to prepare an analysis for inclusion in the first or second quarterly JOC Audit Implementation Status Report:
- a. That shows the number, aggregate value and average value of maintenance-related JOC work orders over the prior three fiscal years;
 - b. That describes the type of maintenance work performed;
 - c. That analyzes the potential to accomplish some or most of this work using County staff, instead of JOC contractors. The analysis should assume that County staff can perform some "baseline" of maintenance, to be supplemented by JOC contractors, as needed, and should include a cost analysis and implementation timeline (for hiring, training and ramp-up) and the increased deferred maintenance funding included in the Chief Executive Officer's upcoming Countywide

Deferred Maintenance plan.

3. Instruct the Director of Personnel to ensure that, for the next five years:
 - a. Each Department Head with JOC authority has included in their annual Management Appraisal and Performance Plan a priority related to JOC Reform; and
 - b. The Director of Internal Services has included in his annual Management Appraisal and Performance Plan a priority related to completing a portion of ISD's maintenance projects with in-house staff (JOC Workforce Reinvestment), rather than through JOC work orders.
4. Instruct the Auditor-Controller to perform an expedited follow-up review of the County's Job Order Contract program administration at the end of the 24 month implementation period, identifying which recommendations from the April 17, 2017, and May 4, 2017, reports have been fully implemented, partially implemented or not implemented.

KK: Job Order Contract Audit Follow-up Motion