



California Uniform Construction Cost Accounting Commission

State Controller's Office – Division of Accounting & Reporting
3301 C Street, Suite 500, Sacramento, California 95816
http://www.sco.ca.gov/ard_cuccac.html

June 17, 2015

CATHRYN A. HILLIARD, Executive Director
CONSTRUCTION INDUSTRY FORCE ACCOUNT COUNCIL (CIFAC)
837 Arnold Drive, Suite 200
Martinez, CA 94553

RE: CIFAC REQUEST FOR CLARIFICATION, July 28, 2014
Job Order Contracting, County of Ventura

Dear Ms. Hilliard:

Thank you for your request for clarification received by the California Uniform Construction Cost Accounting Commission. We have reviewed your concerns with regards to the County of Ventura's use of Job Order Contracts related to the informal bid limits and processes as governed by the PCC and the Act and under the supervision of the CUCCAC.

Our considered opinion is as follows:

- The issuance of an original JOC must be done pursuant to the Act. Specifically, the JOC contracting procedures must comply with the notification, advertisement, and award provisions of the Act.
- There is no limitation to JOC contracting imposed by the Act for work which does not qualify as a "Project" under PCC 22002(c).
- In accordance with the State Attorney General opinion (76 Op. Atty. Gen 126,7-14-93), no work which could be classified as a "Project" under the Act may be performed under a JOC by a county signatory to the Act if the value of the task order exceeds the Act's informal bid limit (currently \$175,000).

Where agencies use *informally bid* job order contracts (JOC), they must comply with Section 22030-22045 of the Public Contract Code (PCC). JOC task orders for work which qualifies as a "public project" as defined by Section 22002 of the PCC must not exceed the informal bid limit (currently \$175,000) when informally bid.

TO: Ms. Cathryn Hilliard, CIFAC
June 17, 2015
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The Act does not preclude the issuance of a JOC with task orders in excess of the informal bid limit. In this case, any JOC which includes worked defined as a “public project” with a task order value in excess of the informal bid limit must be bid formally in compliance with the requirements of PCC section 22037.

Should you have any other questions regarding this matter, please do not hesitate to contact me.

Sincerely,

George Hicks
Chairman, CUCCAC

GH:ljc

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June 8, 2015

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Re: Job Order Contracting Clarification under CUCCAC

Dear Commissioners:

We are writing on behalf of the Gordian Group, a nationwide company that assists local governments with implementing and managing job order contract ("JOC") programs for the procurement of minor construction and renovation projects. The Gordian Group supports a number of signatories to the California Uniform Public Construction Cost Accounting Act ("the Act") and is very supportive of the mission of the California Uniform Construction Cost Accounting Commission. The Gordian Group tries to assist our client agencies in implementing cost effective procurement tools while also adhering to the requirements of the Public Contract Code and any other applicable rules and regulations. In that spirit, we are seeking clarification on the interplay between the Act and other provisions of the Public Contract Code which specifically allows counties to use unit price annual contracts for "for repair, remodeling, or other repetitive work" but not for any new construction. (Pub. Con. Code §20128.5)

As you know, the Act currently defines a public project as "construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any publicly owned, leased, or operated facility." (Pub. Con. Code §22002, subd. (c)(1).) By definition, this includes both new construction and repair work. There is a potential for confusion when counties in California are signatories to the Act but also utilize JOC under section 20128.5.

In response to an inquiry by CIFAC which touched on the ambiguity, it is our understanding that the Commission recently rendered an interpretation and opinion that sought to harmonize the two statutory

provisions. Based on that opinion, and in an effort to help provide our clients with information that is consistent with the law and the view of the Commission, we are seeking clarification on the following questions.

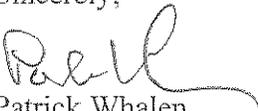
Can you confirm that when county signatories to the Act enter, pursuant to PCC 20128.5, into annual contracts for repair and renovation work – not new construction – counties should utilize the traditional formal bid process for the execution of the JOC? Similarly, can you confirm that when such counties issue individual job orders under formally bid JOCs, those job orders may not be for any new construction, and are subject to the dollars limitations in section 20128.5?

We note that such an interpretation allows signatories to the Act to continue to use the existing statutory dollar limits for any public projects that involve any new construction under informal bid procedures, while simultaneously allows them to utilize the proven benefits of JOC for repair and renovation projects.

Because there is a fair amount of confusion among our various county clients, we look forward to receipt of a letter from the Commission clarifying our understanding is correct.

Thank you in advance for your attention to this matter.

Sincerely,


Patrick Whalen

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June 23, 2015

George Hicks, Chair
and Members of the California Uniform Construction Cost Accounting Commission
c/o State Controller's Office
Local Government Policies Section
P.O. Box 942850
Sacramento, CA 94250

RE: CUCCAC letter dated June 17, 2015 to address
CIFAC Request for Clarification, July 28, 2014

Dear Chairperson Hicks and Commissioners:

It is CIFAC's position, as supported by the California Public Contract Code (PCC) and as stated in the Attorney General's Opinion No. 92-1006, July 14, 1993, Volume 76, Page 126, Job Order Contracts are for "repair, remodeling, or other repetitive work and not new construction." Based on these facts and documents as previously presented regarding the County of Ventura, CIFAC would like to respectfully request the Commission to reconsider their determination regarding CUCCAA and Job Order Contracting.

Although CUCCAC references the Attorney General's Opinion No 92-1006 in their determination, we ask that you carefully reconsider the following points as they are stated in the Attorney General's Opinion:

- JOC calls only for repair, remodeling, or other repetitive work and not new construction.
- A public project, or public works project, does not encompass a combination of projects which are essentially unspecified at the time of bidding.
- Unit price contracting authority is specially granted and subject to the specified limitations.

We are confident upon the Commission's re-evaluation of Attorney General's Opinion No 92-1006, you will find it to be not relevant in the matter of the County of Ventura utilizing JOC's for new construction. The California Public Contract Code is clear in its definition of a Job Order Contract in §20128.5. The Act (for new construction) and Job Order Contracting (for maintenance) are two separate delivery methods and were not intended to be combined for streamlining the bidding process. Furthermore, the Act does not give the authority to imply there is no limitation to a JOC whereas JOC's are expressly limited in the PCC. We urge the Commission to reconsider its position on the use of JOC for new Construction under the informal bidding procedures of the Act as there is no provision for this anywhere in statute.

Sincerely,

Cathryn A. Hilliard
Executive Director
Construction Industry Force Account Council (CIFAC)

Shari Bacon
Southern Region Field Representative

Attachments: Attorney General's Opinion No. 92-1006, July 14, 1993, Volume 76, Page 126



Opinion No. 92-1006—July 14, 1993

Requested by: MEMBER OF THE CALIFORNIA STATE SENATE

Opinion by: DANIEL E. LUNGREN, Attorney General
Anthony S. DaVigo, Deputy

THE HONORABLE WILLIAM A. CRAVEN, MEMBER OF THE CALIFORNIA STATE SENATE, has requested an opinion on the following question:

May a general law county or a general law city enter into a "job order contract" in excess of \$50,000 for the performance of public projects involving minor construction, and the renovation, alteration, painting, and repair of existing facilities?

CONCLUSION

A general law county or a general law city may not enter into a "job order contract" in excess of \$50,000 for the performance of public projects involving minor construction, and the renovation, alteration, painting, and repair of existing facilities, except under narrowly defined statutory conditions applicable only to counties.

ANALYSIS

A "job order contract" (JOC) is a competitively bid, firm 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, generally a multi-year contract including a base year and multiple option years, is bid and awarded prior to the identification of any specific projects to be performed. Thus, a typical JOC involves a variety of tasks such as the remodeling, renovation, and repair, including roofing, electrical, plumbing, and painting, of all of a public agency's buildings for a period of years.

A JOC is a fixed price agreement in the sense that it is based upon specified charges contained in a unit price book (prepared by the public agency or by independent commercial sources) setting forth detailed repair and construction tasks, including task descriptions, specifications, units of measurement, and unit prices for each task. A contractor's bid is expressed in terms of a percentage of the specified book charges such as 115 percent or 125 percent. The book is then used to determine the costs of each proposed project during the term of the contract. The total JOC value may be specified as a range with a certain guaranteed minimum, typically from

(Matthew Bender & Co., Inc.)

\$50,000 to \$250,000, and a maximum which may extend beyond \$10 million.

The inquiry presented for consideration is, essentially, whether such a contract is authorized under the provisions of the Local Agency Public Construction Act (Pub. Contract Code, §§ 20100-20920)¹ or the Uniform Public Construction Cost Accounting Act (§§ 22000-22045) pertaining to cities and counties. We conclude generally in the negative.

The Local Agency Public Construction Act deals separately with counties, cities, school districts and other public agencies. With regard to public works contracts awarded by counties (§ 20120),² whenever the project cost of construction, alteration, or repair exceeds \$4,000; or in the case of a county containing a population of 500,000 or more,³ \$6,500; or in the case of alteration or repair of county owned buildings in a county containing a population of 2 million or more, \$50,000; the work must be done by contract in accordance with the provisions of the act pertaining to counties. (§§ 20121, 20122, 20123.) Generally, the contract must be let to bid and awarded to the lowest responsible bidder. (§§ 20125, 20128.) With respect to cities, when the expenditure required for a public project exceeds \$5,000, it must be contracted for and let to the lowest responsible bidder. (§ 20162.)

The Legislature has provided an alternative method for the bidding of public works projects by public entities. (§ 22001.) The Uniform Public Construction Cost Accounting Act applies generally to a "public agency" including counties and cities. (§ 22002, subd. (a).) Under this act, the governing board of either a city or a county may, by resolution and notification to the State Controller, elect to become subject to the procedures set forth in the act. (§ 22030.) In such event, public projects⁴ in excess of \$25,000 but not in excess of \$75,000 may be let to contract by informal bidding procedures established by ordinance. (§ 22032, subds. (a), (b).) Public projects in excess of \$75,000 must, with certain exceptions not

¹ Undesignated section references herein are to the Public Contract Code.

² A "public works contract" is defined generally as "... an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind." (§ 1101; see also, Gov. Code, §§ 25358, 31000 [maintenance, care, upkeep].)

³ Special provisions apply to contracts between \$4,000 and \$10,000, and to contracts in excess of \$10,000, let by counties containing a population of less than 500,000. (§§ 20150-20150.14.) An analysis of those provisions, which would be more analogous to the discussion in respect to cities, suggests no basis for a conclusion contrary to that reached in connection with counties generally. As in the case of cities (§ 20161), a "public project" is expressly defined to include "a project" for the erection, improvement, and repair of public buildings and works. (§ 20150.2.)

⁴ "Public project" includes construction, reconstruction, erection, alteration, renovation, improvement, demolition, repair, painting, or repainting of any publicly owned, leased, or operated facility. (§ 22002, subd. (c).)

pertinent here, be let to contract by formal bidding procedure. (§ 22032, subd. (c).)

Under either statutory scheme, it is expressly unlawful for a county or a city to split or separate into smaller work orders or projects any public works project for the purpose of evading the provisions requiring public works to be done by contract after competitive bidding. (§§ 20123.5, 20163, 22033.)⁵

As we have seen, all public projects over \$50,000 (and many below \$50,000) are subject to contract bidding. (§§ 20121-20123, 20150.4 [counties]; § 20162 [cities]; §§ 22032, subds. (a),(b), 22034 [alternative informal procedure]; §§ 22032, subd. (c), 22037 [alternative formal procedure].) In our view, a public project, or public works project, does not encompass a combination of projects which are essentially unspecified at the time of bidding, except as may be otherwise expressly provided by law.

First, such an indefinite combination is not suggested in the context of either statutory scheme. Under the Local Agency Public Construction Act, the board of supervisors is required to adopt, and bidders permitted to examine, and the contractor required to conform with, plans, specifications, strain sheets, and working details for the project. (§§ 20124, 20127, 20128.) The extent to which changes or additions may be ordered in connection with work to be performed under an awarded contract is strictly limited. (§ 20142.) While the board of supervisors is authorized to insert provisions in the contract itself for the performance of such extra work and materials as may be required for "the proper completion or construction of the whole work contemplated," it is clear that the authorization pertains to a specified project in connection with a specific building or structure. (§ 20143.)

Similarly, the board of supervisors of a county with a population of less than 500,000 is required to adopt, and bidders permitted to examine, plans, specifications, and working details for all public projects in excess of \$10,000. (§§ 20150.12, 20150.13.) Further, notices by such a county or by a city inviting formal bids must "distinctly state the project to be done." (§§ 20150.8, 20164.)

Counties and cities, including chartered counties and chartered cities, which have elected to become subject to the Uniform Public Construction Cost Accounting Act are required to adopt, and bidders permitted to examine, plans, specifications, and working details for all public projects

⁵ A JOC does not appear to involve the splitting of a public project into smaller work orders for the purpose of evading contract bidding, but rather involves the combination of projects with the purpose or effect of avoiding contract bidding on each project separately.

in excess of \$75,000. (§§ 22039, 22040.) Notices inviting formal bids must "distinctly describe the project." (§ 22037.) With respect to public projects of lesser value, public agencies must enact an informal bidding ordinance which, inter alia, "shall describe the project in general terms, [and] how to obtain more detailed information about the project. . . ." (§ 22034, subd. (d).)

Second, and perhaps of paramount significance, the Legislature has addressed itself to the kind of contract which may be generally described as a JOC. Section 20128.5 provides:

"Notwithstanding any other provisions of this article, the board of supervisors may award annual contracts which do not exceed one million dollars (\$1,000,000) 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 bidder and shall be based on plans and specifications for typical work. No project shall be performed under such a 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."⁶

To the extent, then, that a JOC (1) involves a county and not a city, (2) has a length of a single year's duration and not longer, (3) is limited to \$1 million in value, (4) calls only for repair, remodeling, or other repetitive work and not new construction or design or contract drawings, and (5) is based upon plans and specification for such typical work, section 20128.5 authorizes the execution of the contract.

It may be seen that section 20128.5's unit price contracting authority, "[n]otwithstanding any other provisions of [article 3.5 pertaining to counties]," is specially granted and subject to the specified limitations. It may not be reasonably contended, therefore, that such powers may be exercised by counties which are in excess of such authority, or may be exercised by

⁶ Section 20145 allows a county containing a population of 6 million or more to have a county officer act in place of the board of supervisors in awarding the contracts.

cities in the absence of an express grant of authority and in the absence of any specified limitations. (See *Safer v. Superior Court* (1975) 15 Cal.3d 230, 236-238; *Board of Trustees v. Judge* (1975) 50 Cal.App.3d 920, 927; 76 Ops.Cal.Atty.Gen. 86, 89 (1993); see also *Wildlife Alive v. Chickering* (1976) 18 Cal.3d 190, 196; *DeWeese v. Unick* (1980) 102 Cal.App.3d 100, 106.) "The mode prescribed is the measure of the power." (*People v. Zamora* (1980) 28 Cal.3d 88, 98.)

It is concluded that a general law county or a general law city may not enter into a "job order contract" in excess of \$50,000 for the performance of public projects involving minor construction, and the renovation, alteration, painting, or repair of existing facilities, except under the narrowly defined conditions of section 20128.5 applicable only to counties.

Opinion No. 93-203—July 14, 1993

Requested by: MEMBER OF THE CALIFORNIA SENATE

Opinion by: DANIEL E. LUNGREN, Attorney General
Gregory L. Gonot, Deputy

THE HONORABLE TOM HAYDEN, MEMBER OF THE CALIFORNIA SENATE, has requested an opinion on the following questions:

1. Are local building departments responsible for enforcing the access requirements of the Americans with Disabilities Act incorporated into California law by chapter 913 of the Statutes of 1992?
2. If not, are local building departments authorized to elect to enforce the federal requirements incorporated into California law?
3. If so, are local building departments immune from liability for enforcing these state building requirements?
4. Is the California Attorney General responsible for enforcing the federal access requirements or civil rights provisions incorporated into California law by chapter 913 of the Statutes of 1992?