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January 22, 2020

Re: 2020 California Public Contract Code Additions and Revisions

Dear Public Work Construction Colleagues:

Please take note of the following 2020 revisions to the California Public Contract Code (PCC) as a result of legislation enacted in 2019.

Community college clients will also receive a second highlighted copy more directly pertinent to their concerns.

Previous year-end Public Contract review letters can be found on our website at www.jaretlaw.com. If you have any questions, or need further information, please do not hesitate to call.

Best regards for the New Year!

Sincerely,



PHILLIP A. JARET

PAJ:dda

2020 California Public Contract Code Additions and Revisions

I. AMENDED PCC STATUTES

PCC § 2003 – Facilitation of contract awards to small businesses; disabled veteran businesses, or social enterprises; specific counties; exceptions to lowest responsible bidder requirements

Similar to the amended § 2003, last year's new statute which increased the maximum value of a small business procurement preference from 5% to 7% and set a maximum financial value of \$150,000, this law has been extended to also now include the County of San Joaquin. This existing statute established a disabled veteran business preference and social enterprise preference combined with a small business preference to a maximum percentage value of no more than 15% and a maximum financial value of no more than \$200,000.

PCC § 9204 – Legislative findings and declarations regarding timely and complete payment of contractors for public works projects; claims process

This amended statute under Chapter 9 Claims and Disputes, extends the claim resolution process for any claim in relation to a public work project from January 1, 2020 to January 1, 2027.

PCC § 10326.2 – Acquisition of heavy mobile fleet vehicles; use by Department of Transportation; best value procurement

This amended statute, applicable to the Department of Transportation, increases the threshold level of best value procurement from \$20 million annually to \$50 million.

PCC § 20145 – Los Angeles County; contracts under \$330,000; authorization for county officer to perform acts required of board

This amended statute, applicable to Los Angeles County, increases the threshold amount to \$330,000 permitting the board by ordinance to adopt and advertise plans and specifications, award contracts, approve bonds, or order the change or alteration of contracts.

PCC § 20155 – Pilot program for construction projects; best value construction contracting method

This amended statute with respect to best value construction contracting for counties with regard to projects in excess of \$1 million, now includes the Counties of Monterey and Santa Clara. These counties have been added to the prior list authorized by this pilot program that includes: Alameda, Los Angeles, Riverside, San Bernardino, San Diego, San Mateo, Solano, and Yuba.

PCC § 20155.1 – Definitions

This amended statute, consistent with § 20155 above, now also includes the Counties of Monterey and Santa Clara. The best value construction contracting method may be used to award

individual annual contracts, not exceeding \$3 million for repair, remodeling or other repetitive work. Annual contracts may be extended or renewed for two subsequent annual terms and a maximum of \$6 million over the subsequent two terms of the contract.

PCC § 20155.7 – Report to legislative committees

This amended statute extends the date of submission from 2020 to 2024 required of the board of supervisors of a participating county to submit a report to the appropriate policy committees of the Legislature and the Joint Legislative Budget Committee which reports on these various best value projects.

PCC § 20291 – Bids; award; quotations; advertisement; rejection and readvertisement

This amended section, applicable to the Santa Cruz Metropolitan Transit District, increases the threshold supplies, equipment and materials acquisition amount from \$25,000 to \$50,000 by way of a best value methodology. Additional ancillary requirements are also set forth.

PCC § 21161 – Bids; bonds; work by force account; materials and supplies

This amended statute applicable to the Santa Clara Valley Water District has increased the bid threshold amount from \$25,000 to \$50,000. Any improvements may be done by district personnel provided they do not exceed \$50,000 unless the work consists of channel protection, maintenance work, environmental preservation or habitation management, and emergency work. The district may also elect to participate in the Uniform Public Construction Cost Accounting Act.

II. AMENDED EDUCATION AND LABOR CODE STATUTES

Education Code § 81703 – Progression of design-build projects

Education Code §81704 –Bonds; awards of additional subcontracts; labor compliance program for public works projects

Education Code §81709 – Duration of chapter

Education Code §82542 – Use for various activities; charge

These amended code sections (81703; 81704; 81709; 82542) extend the authorization for community college districts to enter into design-build contracts to from January 1, 2020 to January 1, 2030. On or after July 1, 2020, a design-build entity cannot be prequalified or shortlisted unless it provides an enforceable commitment to the district that the entity and its subcontractors use skilled and trained workers or building and construction trade apprentices to perform all work on the project(s) unless the district has entered into a project labor agreement.

Labor Code § 1720 – “Public works” and “paid for in whole or in part out of public funds” defined; exemptions from chapter; ordinances requiring payment of prevailing wages

This amended statute expands the definition of public works to include work conducted during site assessment or feasibility studies. It specifies that preconstruction work, including design, site assessment, feasibility studies, and land surveying, is deemed to be part of public work, regardless of whether any further construction work is performed.

III. NEW PCC STATUTES

PCC § 10230 – Contracts with disabled veteran business enterprise participation included in bid; compliance with California Disabled Veteran Business Enterprise Program

This new statute, effective January 1, 2020, with regard to contracting by state agencies, requires that every contract for which disabled veteran business enterprise participation is included in the bid shall contain a provision requiring the contractor to comply with rules, regulations, ordinances, and statutes that apply to the California Disabled Veteran Business Enterprise, as defined in Section 999 of the Military and Veterans Code, including but not limited to, the requirements of subdivision (d) of Section 999.5 of the Military and Veterans Code.

PCC § 12102.3 – Information technology services; postevaluation of contracts

This new statute, applicable to acquisition of information technology goods and services through contracting by public agencies, establishes a post evaluation of each contract for the acquisition of information technology services totaling \$500,000 or more. The post evaluation is required to be prepared within 60 days of completion of the contract and reports whether the contracted work was completed within the time specified, whether it was completed within the budget specified, and other factors outside the control of the contractor that caused difficulties in contractor performance. Post evaluations remain on file at the offices of the department for a period of 36 months following contract completion.

ARTICLE 41.3. Los Angeles Community College District — Best Value Procurement [20663-20663.7]

- 20663 Legislative findings, declarations, and intent.**
- 20663.1 Definitions.**
- 20663.2 Use of best value procurement method; adoption of guidelines; refusal of bidder to execute contract; retention proceeds; rights of subcontractors.**
- 20663.3 Solicitation of bids; prequalification of bidder; protection of identifying and price information.**
- 20663.4 Evaluation of bids; written decision required; public announcement.**
- 20663.5 Reports to Legislature.**
- 20663.6 Requirement to select lowest responsible bidder not affected.**
- 20663.7 Duration of article.**

This new Article of the Public Contract Code now authorizes the Los Angeles Community College District to use cost effective options for building and modernizing community college facilities now allowing for “best value” procurement method process. “Best value” is defined as a procurement process whereby the selected bidder may be selected on the basis of objective criteria for evaluating the qualifications of bidders with the resulting selection representing the best combination of price and qualifications.

It provides for a pilot program for this community college district for utilization on projects of over \$1million. These provisions, particularly § 20663.3, provides for the establishment of a procedure to prequalify bidders. The information submitted by the bidder as part of the evaluation process shall not be open to the public inspection to the extent the information is exempt from disclosure under the California Public Records Act. The evaluation criteria with respect to the bids and the procedure to be followed is set forth in § 20663.4. As noted in § 20663.6, the best value procurement method is not intended to change guidelines, procedures and requirements of the governing board to award a contract for a project to the lowest responsible bidder or else reject all bids. This article remains in effect until January 1, 2025.

IV. PUBLIC CONTRACT CODE CASES

JMS Air Conditioning and Appliance Service, Inc. v. Santa Monica Community College District, et al. (2018) 30 Cal.App.5th 945

This appellate decision for the Second Appellant District of California challenged a decision by the Santa Monica Community College District pursuant to the procedures followed in the Subletting and Subcontracting Fair Practices Act (PCC § 4100 et seq.). The petitioner requested that the Superior Court set aside an administrative decision by the District that allowed a prime contractor Bernards Brothers, Inc., to substitute another subcontractor, in place of JMS. Factually, the dispute was over whether JMS was properly licensed to perform the boiler work listed in the HVAC specification, and whether it was "incidental and supplemental" or "essential" to the HVAC scope. The court found substantial evidence supported substitution based on improper licensure, but found there was no substantial evidence to support substitution based on a failure to perform. The plaintiff questioned the appropriateness of the District conducting a PCC § 4107 hearing by an employee with relevant job responsibilities rather than by the Board itself, and the appellate court concluded that appropriate due process had been afforded in the substitution hearing. Thus the "awarding authority" itself is not required to conduct the substitution hearing, and independent substantial evidence determination by the appellate court was found to support the substitution decision. Substantial evidence supported the District's finding that JMS was not licensed to perform the boiler work in the HVAC specification. The court commented that "we will not be quick to second – guess the findings of awarding authorities, to which section 4107 seeks to give *more* control, not less." The takeaway from this decision is that a properly conducted section 4107 hearing, by a qualified District personnel in a hearing, should be given deference by a reviewing court.

Synergy Project Management, Inc. City and County of San Francisco (2019) 33 Cal.App.5th 21

This appellate decision for the First Appellant District of California, is another PCC § 4107 case. The City entered into a contract with prime contractor Ghilotti Brothers, Inc. for a major renovation of Haight Street. Ghilotti entered into a subcontract with Synergy Project Management, Inc. to perform excavation and utilities work. After Synergy broke five gas lines and engaged in other instances of unsafe behavior, the City invoked a provision of its contract with Ghilotti to direct Ghilotti to remove Synergy from the project and substitute a new subcontractor. Under protest, Ghilotti terminated Synergy and identified two potential replacement contractors to the City, and Synergy objected to being replaced. A hearing was held under PCC § 4107, and the

hearing officer determined that Synergy's poor performance established a statutory ground for substitution. In this appellate proceeding, both Ghilotti and Synergy objected to the hearing officer's decision to remove Synergy from the project. Although neither company challenged the hearing officer's factual findings involving Synergy's work on the project as being substantially unsatisfactory and not in substantial accordance with the plans and specifications, his decision was challenged on the basis that the City itself did not have authorization under section 4107 to remove a subcontractor except upon the prime contractor's request. The court cited to the *JMS Air Conditioning* decision, consistent with the Act's goal of affording more control for the awarding authority in selecting subcontractors.