

Introduced by Senator Price

February 19, 2010

An act to amend Section 130232 of the Public Utilities Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1341, as introduced, Price. Los Angeles County Metropolitan Transportation Authority: contracting.

The County Transportation Commissions Act creates county transportation commissions or authorities in Los Angeles, Orange, Riverside, San Bernardino, and Ventura counties, with specified powers and duties. Existing law, with respect to those agencies, generally requires purchase of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure exceeds \$25,000, to be by contract let to the lowest responsible bidder. Existing law contains various alternative provisions applicable solely to the Los Angeles County Metropolitan Transportation Authority.

This bill would enact additional provisions applicable to the Los Angeles County Metropolitan Transportation Authority relative to preferences in contracting for small business enterprises, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 130232 of the Public Utilities Code is
- 2 amended to read:
- 3 130232. (a) Except as provided in subdivision (f), purchase
- 4 of all supplies, equipment, and materials, and the construction of

1 all facilities and works, when the expenditure required exceeds
2 twenty-five thousand dollars (\$25,000), shall be by contract let to
3 the lowest responsible bidder. Notice requesting bids shall be
4 published at least once in a newspaper of general circulation. The
5 publication shall be made at least 10 days before the date for the
6 receipt of the bids. The commission, at its discretion, may reject
7 any and all bids and readvertise.

8 (b) Except as provided for in subdivision (f), whenever the
9 expected expenditure required exceeds one thousand dollars
10 (\$1,000), but not twenty-five thousand dollars (\$25,000), the
11 commission shall obtain a minimum of three quotations, either
12 written or oral, that permit prices and terms to be compared.

13 (c) Where the expenditure required by the bid price is less than
14 fifty thousand dollars (\$50,000), the executive director may act
15 for the commission.

16 (d) All bids for construction work submitted pursuant to this
17 section shall be presented under sealed cover and shall be
18 accompanied by one of the following forms of bidder's security:

19 (1) Cash.

20 (2) A cashier's check made payable to the commission.

21 (3) A certified check made payable to the commission.

22 (4) A bidder's bond executed by an admitted surety insurer,
23 made payable to the commission.

24 (e) Upon an award to the lowest bidder, the security of an
25 unsuccessful bidder shall be returned in a reasonable period of
26 time, but in no event shall that security be held by the commission
27 beyond 60 days from the date that the award was made.

28 (f) The following provisions apply only to the Los Angeles
29 County Metropolitan Transportation Authority:

30 (1) The contract shall be let to the lowest responsible bidder or,
31 in the authority's discretion, to the responsible bidder who
32 submitted a proposal that provides the best value to the commission
33 on the basis of the factors identified in the solicitation when the
34 purchase price of all supplies, equipment, and materials exceeds
35 one hundred thousand dollars (\$100,000). "Best value" means the
36 overall combination of quality, price, and other elements of a
37 proposal that, when considered together, provide the greatest
38 overall benefit in response to requirements described in the
39 solicitation documents. The contract shall be let to the lowest

1 responsible bidder when the purchase price of the construction of
2 all facilities exceeds twenty-five thousand dollars (\$25,000).

3 (2) The authority shall obtain a minimum of three quotations,
4 either written or oral, that permit prices and terms to be compared
5 whenever the expected expenditure required exceeds three thousand
6 dollars (\$3,000), but not one hundred thousand dollars (\$100,000).

7 (3) The authority may purchase supplies, equipment, and
8 materials from a public auction sale, including public auctions
9 held via the Internet, using the procedures established for all other
10 participants in the public auction.

11 (4) The authority may participate in a procurement agreement
12 involving other public entities that is identified by a procuring
13 public entity or entities as a cooperative procuring agreement from
14 which other public entities may make purchases or enter into
15 contracts, and the authority may procure, and enter into contracts
16 for, items purchased pursuant to that procurement agreement,
17 notwithstanding that the authority may not be the procuring public
18 entity, provided the procurement agreement is awarded or entered
19 into by either of the following:

20 (A) One or more public entities or an organization of public
21 entities, which may include the authority.

22 (B) A federal, state, or local public entity.

23 (5) (A) *Notwithstanding any other provision of law requiring*
24 *the authority to award contracts to the lowest responsible bidder,*
25 *the authority may do any of the following in facilitating contract*
26 *awards to small businesses:*

27 (i) *Provide for a small business preference in construction, the*
28 *procurement of goods, or the delivery of services where*
29 *responsibility and quality are equal. The preference to a small*
30 *business shall be up to 5 percent of the lowest responsible bidder*
31 *meeting specifications.*

32 (ii) *Establish a subcontracting participation goal for small*
33 *businesses on contracts and grant a preference, up to a maximum*
34 *of 5 percent, to those bidders who meet the goal.*

35 (iii) *Require bidders to make a good faith effort, in accordance*
36 *with the criteria established pursuant to subparagraph (B), prior*
37 *to the time bids are opened, to comply with the goals and*
38 *requirements established by the authority relating to participation*
39 *in the contract by small businesses.*

40 (B) *The following shall apply to bidders under this paragraph:*

1 (i) *The bidder attended any presolicitation or prebid meetings*
2 *that were scheduled by the authority to inform all bidders of the*
3 *small business enterprise program requirements for the project*
4 *for which the contract will be awarded. The authority may waive*
5 *this requirement if it determines that the bidder is informed as to*
6 *those program requirements.*

7 (ii) *The bidder identified and selected specific items of the*
8 *project for which the contract will be awarded to be performed by*
9 *small business enterprises to provide an opportunity for*
10 *participation by those enterprises.*

11 (iii) *The bidder advertised, not less than 10 calendar days before*
12 *the date the bids are opened, in one or more daily or weekly*
13 *newspapers, trade association publications or trade-oriented*
14 *publications, trade journals, or other media, specified by the*
15 *authority for small business enterprises that are interested in*
16 *participating in the project. This clause applies only if the authority*
17 *gave public notice of the project not less than 15 calendar days*
18 *prior to the date the bids are opened.*

19 (iv) *The bidder provided written notice of his or her interest in*
20 *bidding on the contract to the number of small business enterprises*
21 *required to be notified by the project specifications not less than*
22 *10 calendar days prior to the opening of bids. To the extent*
23 *possible, the authority shall make available to the bidder not less*
24 *than 15 calendar days prior to the date the bids are opened a list*
25 *or a source of lists of enterprises which are certified by the*
26 *authority as small business enterprises.*

27 (v) *The bidder followed up initial solicitations of interest by*
28 *contacting the enterprises to determine with certainty whether the*
29 *enterprises were interested in performing specific items of the*
30 *project.*

31 (vi) *The bidder provided interested small business enterprises*
32 *with information about the plans, specifications, and requirements*
33 *for the selected subcontracting or material supply work.*

34 (vii) *The bidder requested assistance from small business*
35 *community organizations; small business contractor groups; local,*
36 *state, or small business assistance offices; or other organizations*
37 *that provide assistance in the recruitment and placement of small*
38 *business enterprises, if any are available.*

39 (viii) *The bidder negotiated in good faith with the small business*
40 *enterprises, and did not unjustifiably reject as unsatisfactory bids*

1 prepared by any small business enterprises, as determined by the
2 authority.

3 (ix) Where applicable, the bidder advised and made efforts to
4 assist interested small business enterprises in obtaining bonds,
5 lines of credit, or insurance required by the authority or contractor.

6 (x) The bidder's efforts to obtain small business enterprise
7 participation could reasonably be expected by the authority to
8 produce a level of participation sufficient to meet the goals and
9 requirements of the authority.

10 (C) "Small business enterprise" as used in this paragraph,
11 means a business enterprise consistent with the following:

12 (i) The business enterprise is classified as a small business
13 under United States Small Business Administration rules and meets
14 the current small business enterprise size standards found in 13
15 CFR Part 121 appropriate to the type of work the enterprise seeks
16 to perform.

17 (ii) Small business enterprise eligibility shall be denied to any
18 concern or group of concerns controlled by the same individual
19 or individuals which has average annual gross receipts greater
20 than ____ million dollars (\$____) over the previous three fiscal
21 years.

22 (iii) Small business enterprise eligibility shall be denied to any
23 concern or group of concerns owned and controlled by any person
24 whose combined net worth exceeds ____ (\$____), excluding the
25 value of the owner's personal residence.

26 (D) The authority shall adjust the amounts in clauses (ii) and
27 (iii) of subparagraph (C) from time to time for inflation.

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