

AMENDED IN SENATE APRIL 21, 2010

SENATE BILL

No. 1341

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

12 (b) Except as provided for in subdivision (f), whenever the
13 expected expenditure required exceeds one thousand dollars
14 (\$1,000), but not twenty-five thousand dollars (\$25,000), the
15 commission shall obtain a minimum of three quotations, either
16 written or oral, that permit prices and terms to be compared.

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

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

23 (1) Cash.

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

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

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

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

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

34 (1) The contract shall be let to the lowest *responsive and*
35 *responsible bidder* or, in the authority's discretion, to the
36 ~~responsible bidder~~ *person* who submitted a proposal that provides
37 the best value to the commission on the basis of the factors
38 identified in the solicitation when the purchase price of all supplies,

1 equipment, and materials exceeds one hundred thousand dollars
2 (\$100,000). “Best value” means the overall combination of quality,
3 price, and other elements of a proposal that, when considered
4 together, provide the greatest overall benefit in response to
5 requirements described in the solicitation documents. The contract
6 shall be let to the lowest *responsive and* responsible bidder when
7 the purchase price of the construction of all facilities exceeds
8 twenty-five thousand dollars (\$25,000).

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

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

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

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

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

29 (5) (A) Notwithstanding any other provision of law requiring
30 the authority to award contracts to the lowest *responsive and*
31 *responsible bidder or best value proposer, on contracts above one*
32 *hundred thousand dollars (\$100,000)*, the authority may do any
33 of the following in facilitating contract awards to small businesses:

34 (i) Provide for a small business preference in construction,
35 *design-build*, the procurement of goods, or the delivery of services
36 ~~where responsibility and quality are equal~~. The preference to a
37 small business shall be up to 5 percent of the lowest *responsive*
38 *and responsible bidder or best value proposer* meeting
39 specifications *that provide for small business participation*.

1 (ii) Establish a subcontracting participation goal for small
2 businesses on contracts *financed with nonfederal funds* and grant
3 a preference, ~~up to a maximum of 5 percent, to those bidders who~~
4 ~~meet to the lowest responsive and responsible bidders or best value~~
5 *proposers who meet the goal.*

6 (iii) Require bidders *and proposers* to make a good faith effort,
7 in accordance with the criteria established pursuant to subparagraph
8 (B), prior to the time bids *or proposals* are opened, to comply with
9 the goals and requirements established by the authority relating to
10 participation in the contract by small businesses.

11 (B) The following shall apply to bidders *and proposers* under
12 this paragraph:

13 (i) The bidder *or proposer* attended any presolicitation or prebid
14 meetings that were scheduled by the authority to inform all bidders
15 *and proposers* of the small business enterprise program
16 requirements for the project for which the contract will be awarded.
17 The authority may waive this requirement if it determines that the
18 bidder *or proposer* is informed as to those program requirements.

19 (ii) The bidder *or proposer* identified and selected specific items
20 of the project for which the contract will be awarded to be
21 performed by small business enterprises to provide an opportunity
22 for participation by those enterprises.

23 (iii) The bidder *or proposer* advertised, not less than 10 calendar
24 days before the date the bids *or proposals* are opened, in one or
25 more daily or weekly newspapers, trade association publications
26 or trade-oriented publications, trade journals, or other media,
27 specified by the authority for small business enterprises that are
28 interested in participating in the project. This clause applies only
29 if the authority gave public notice of the project not less than 15
30 calendar days prior to the date the bids *or proposals* are opened.

31 (iv) The bidder *or proposer* provided written notice of his or
32 her interest in bidding *or submitting a proposal* on the contract to
33 the number of small business enterprises required to be notified
34 by the project specifications not less than 10 calendar days prior
35 to the opening of bids *or proposals*. To the extent possible, the
36 authority shall make available to the bidder *or proposer* not less
37 than 15 calendar days prior to the date the bids *or proposals* are
38 opened a list or a source of lists of enterprises which are certified
39 by the authority as small business enterprises.

1 (v) The bidder *or proposer* followed up initial solicitations of
2 interest by contacting the enterprises to determine with certainty
3 whether the enterprises were interested in performing specific
4 items of the project.

5 (vi) The bidder *or proposer* provided interested small business
6 enterprises with information about the plans, specifications, and
7 requirements for the selected subcontracting or material supply
8 work.

9 (vii) The bidder *or proposer* requested assistance from small
10 business community organizations; small business contractor
11 groups; local, state, or small business assistance offices; or other
12 organizations that provide assistance in the recruitment and
13 placement of small business enterprises, if any are available.

14 (viii) The bidder *or proposer* negotiated in good faith with the
15 small business enterprises, and did not unjustifiably reject as
16 unsatisfactory bids *or proposals* prepared by any small business
17 enterprises, as determined by the authority.

18 (ix) Where applicable, the bidder *or proposer* advised and made
19 efforts to assist interested small business enterprises in obtaining
20 bonds, lines of credit, or insurance required by the authority or
21 contractor.

22 (x) The bidder's *or proposer's* efforts to obtain small business
23 enterprise participation could reasonably be expected by the
24 authority to produce a level of participation sufficient to meet the
25 goals and requirements of the authority.

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

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

33 (ii) Small business enterprise eligibility shall be denied to any
34 concern or group of concerns controlled by the same individual
35 or individuals ~~which~~ *that* has average annual gross receipts greater
36 than ~~_____ million dollars (\$_____)~~ *twenty-two million dollars*
37 *(\$22,000,000)* over the previous three fiscal years.

38 (iii) Small business enterprise eligibility shall be denied to any
39 concern or group of concerns owned and controlled by any person
40 whose combined net worth exceeds ~~_____ (\$_____)~~ *one million*

- 1 *dollars (\$1,000,000)*, excluding the value of the owner's personal
- 2 residence *or residences*.
- 3 (D) The authority ~~shall~~ *may* adjust the *dollar* amounts in clauses
- 4 (ii) and (iii) of subparagraph (C) from time to time for inflation.