

Senate Bill No. 1341

Passed the Senate August 25, 2010

Secretary of the Senate

Passed the Assembly August 16, 2010

Chief Clerk of the Assembly

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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

LEGISLATIVE COUNSEL'S DIGEST

SB 1341, 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.

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

SECTION 1. Section 130232 of the Public Utilities Code is amended to read:

130232. (a) Except as provided in subdivision (f), purchase of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure required exceeds twenty-five thousand dollars (\$25,000), shall be by contract let to the lowest responsible bidder. Notice requesting bids shall be published at least once in a newspaper of general circulation. The publication shall be made at least 10 days before the date for the receipt of the bids. The commission, at its discretion, may reject any and all bids and readvertise.

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

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

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

- (1) Cash.
- (2) A cashier's check made payable to the commission.
- (3) A certified check made payable to the commission.
- (4) A bidder's bond executed by an admitted surety insurer, made payable to the commission.

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

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

(1) The contract shall be let to the lowest responsible bidder or, in the authority's discretion, to the person who submitted a proposal that provides the best value to the commission on the basis of the factors identified in the solicitation when the purchase price of all supplies, equipment, and materials exceeds one hundred thousand dollars (\$100,000). "Best value" means the overall combination of quality, price, and other elements of a proposal that, when considered together, provide the greatest overall benefit in response to requirements described in the solicitation documents. The contract shall be let to the lowest responsible bidder when the purchase price of the construction of all facilities exceeds twenty-five thousand dollars (\$25,000).

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

(3) The authority may purchase supplies, equipment, and materials from a public auction sale, including public auctions

held via the Internet, using the procedures established for all other participants in the public auction.

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

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

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

(5) (A) Notwithstanding any other provision of law requiring the authority to award contracts to the lowest responsible bidder, on contracts above one hundred thousand dollars (\$100,000), the authority may, except as to contracts for professional services involving private architectural, landscape architectural, engineering, environmental, land surveying, or construction management as defined in Sections 4525 and 4529.10 of the Government Code, do any of the following in facilitating contract awards to small businesses:

(i) Provide for a small business preference in construction, the construction component of a design-build team, the procurement of goods, or the delivery of services. The preference to a small business shall be 5 percent of the lowest responsible bidder meeting specifications that provide for small business participation.

(ii) Establish a subcontracting participation goal for small businesses on contracts financed with nonfederal funds and grant a preference of 5 percent to the lowest responsible bidders who meet the goal.

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

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

(i) The bidder attended any presolicitation or prebid meetings that were scheduled by the authority to inform all bidders of the

small business enterprise program requirements for the project for which the contract will be awarded. The authority may waive this requirement if it determines that the bidder is informed as to those program requirements.

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

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

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

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

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

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

(viii) The bidder negotiated in good faith with the small business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any small business enterprises, as determined by the authority.

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

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

(C) "Small business enterprise" as used in this paragraph, means a business enterprise that is classified as a small business under United States Small Business Administration rules and meets the current small business enterprise size standards found in 13 CFR Part 121 appropriate to the type of work the enterprise seeks to perform. The authority may establish limitations regarding the average annual gross receipts of a small business over the previous three fiscal years and establish limitations regarding the personal net worth of the owner of the small business, exclusive of the value of the owner's personal residence.

Approved _____, 2010

Governor