

AMENDED IN SENATE JUNE 18, 2012

AMENDED IN ASSEMBLY MAY 1, 2012

AMENDED IN ASSEMBLY APRIL 12, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2440**

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**Introduced by Assembly Member Bonnie Lowenthal**

February 24, 2012

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An act to amend Sections 130232 and 130242 of, *to add Section 130051.22 to*, and to repeal Sections 130051.21 and 130243 of, the Public Utilities Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 2440, as amended, Bonnie Lowenthal. Los Angeles County Metropolitan Transportation Authority: contracting.

(1) Existing law creates the Los Angeles County Metropolitan Transportation Authority, with specified powers and duties. Existing law requires a contract by the authority for a purchase of supplies, equipment, or materials with the purchase price exceeding \$100,000 to be let to the lowest responsible bidder, or best value proposer.

This bill would increase that amount to \$150,000.

(2) Existing law requires the authority to obtain a minimum of 3 quotations when the expected expenditure exceeds \$3,000 but not \$100,000.

This bill would increase the upper limit of \$100,000 to \$150,000.

(3) *Existing law allows the authority, on certain contracts above \$100,000, to take various actions to facilitate contract awards to small businesses.*

*This bill would, in this regard, delete the requirement for the contracts to be above \$100,000.*

(3)

(4) Existing law provides for the inspector general of the authority to prepare a prequalification questionnaire to be completed by certain potential contractors. Existing law requires the authority to adopt a change order procedure meeting certain requirements.

This bill would repeal these provisions. *The bill would enact new provisions authorizing the authority to establish and maintain a prequalification program for bidders on certain contracts and providing for the authority to require prospective bidders for construction projects to complete and submit a standardized questionnaire and financial statement, as specified. The bill would state legislative intent with regard to the authority's construction change order and related claims process. By imposing new prequalification requirements on the authority, the bill would impose a state-mandated local program.*

(4)

(5) Existing law authorizes the authority to enter into contracts with private entities that combine into a single contract all or some of the planning, design, permitting, development, joint development, construction, construction management, acquisition, leasing, installation, and warranty of some or all components of transit systems and certain facilities. Existing law requires a contract under these provisions to be let to the lowest responsible bidder, with a notice requesting bids required to be published in a newspaper of general circulation at least 60 days before receipt of bids.

This bill would allow the authority to select a contractor under these provisions using *objective* selection criteria in addition to ~~cost~~ *price*. This bill would retain the 60-day publication requirement for contracts estimated to exceed \$10,000,000, but would otherwise impose a 30-day requirement. This bill, in the case of the design of projects permitting the selection of subcontractors, would require the contractor to competitively bid those portions and provide the authority with a list of subcontractors, as specified. Once on the list, the bill would provide that the subcontractors shall have the rights provided under a certain part of the Public Contract Code.

(6) *The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.*

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

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

1     *SECTION 1. The Legislature finds and declares that the Los*  
2 *Angeles County Metropolitan Transportation Authority (LACMTA)*  
3 *should include in its contracting documents, processes, terms and*  
4 *conditions to resolve construction change orders and related*  
5 *claims. The Legislature further finds and declares that LACMTA*  
6 *has solicited input from major construction contractors, small*  
7 *businesses, the Department of Transportation, and peer agencies*  
8 *to identify best practices and improve its change order process*  
9 *and should continue to gather input and improve this process.*

10     ~~SECTION 1.~~

11     *SEC. 2. Section 130051.21 of the Public Utilities Code, as*  
12 *added by Section 4.3 of Chapter 10 of the Statutes of 1996, is*  
13 *repealed.*

14     *SEC. 3. Section 130051.22 is added to the Public Utilities*  
15 *Code, to read:*

16     *130051.22. (a) The authority may establish and maintain a*  
17 *prequalification program for bidders on contracts not covered by*  
18 *subdivision (b).*

19     *(b) On public projects, as defined in subdivision (c) of Section*  
20 *22002 of the Public Contract Code, the authority shall require, at*  
21 *a minimum, that prospective bidders for a construction contract*  
22 *complete and submit to the authority a prequalification*  
23 *standardized questionnaire and financial statement in a form*  
24 *specified by the authority, pursuant to subdivision (a) of Section*  
25 *20101 of the Public Contract Code.*

26     ~~SEC. 2.~~

27     *SEC. 4. Section 130232 of the Public Utilities Code is amended*  
28 *to read:*

29     *130232. (a) Except as provided in subdivision (f), purchase*  
30 *of all supplies, equipment, and materials, and the construction of*  
31 *all facilities and works, when the expenditure required exceeds*

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

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

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

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

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

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

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

- 29 (1) The contract shall be let to the lowest responsible bidder or,  
 30 in the authority's discretion, to the person who submitted a proposal  
 31 that provides the best value to the commission on the basis of the  
 32 factors identified in the solicitation when the purchase price of all  
 33 supplies, equipment, and materials exceeds one hundred fifty  
 34 thousand dollars (\$150,000). "Best value" means the overall  
 35 combination of quality, price, and other elements of a proposal  
 36 that, when considered together, provide the greatest overall benefit  
 37 in response to requirements described in the solicitation documents.  
 38 The contract shall be let to the lowest responsible bidder when the  
 39 purchase price of the construction of all facilities exceeds  
 40 twenty-five thousand dollars (\$25,000).

1 (2) The authority shall obtain a minimum of three quotations,  
2 either written or oral, that permit prices and terms to be compared  
3 whenever the expected expenditure required exceeds three thousand  
4 dollars (\$3,000), but not one hundred fifty thousand dollars  
5 (\$150,000).

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

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

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

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

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

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

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

- 1 (iii) Require bidders to make a good faith effort, in accordance  
2 with the criteria established pursuant to subparagraph (B), prior  
3 to the time bids are opened, to comply with the goals and  
4 requirements established by the authority relating to participation  
5 in the contract by small businesses.
- 6 (B) The following shall apply to bidders under this paragraph:
- 7 (i) The bidder attended any presolicitation or prebid meetings  
8 that were scheduled by the authority to inform all bidders of the  
9 small business enterprise program requirements for the project for  
10 which the contract will be awarded. The authority may waive this  
11 requirement if it determines that the bidder is informed as to those  
12 program requirements.
- 13 (ii) The bidder identified and selected specific items of the  
14 project for which the contract will be awarded to be performed by  
15 small business enterprises to provide an opportunity for  
16 participation by those enterprises.
- 17 (iii) The bidder advertised, not less than 10 calendar days before  
18 the date the bids are opened, in one or more daily or weekly  
19 newspapers, trade association publications or trade-oriented  
20 publications, trade journals, or other media, specified by the  
21 authority for small business enterprises that are interested in  
22 participating in the project. This clause applies only if the authority  
23 gave public notice of the project not less than 15 calendar days  
24 prior to the date the bids are opened.
- 25 (iv) The bidder provided written notice of his or her interest in  
26 bidding on the contract to the number of small business enterprises  
27 required to be notified by the project specifications not less than  
28 10 calendar days prior to the opening of bids. The authority shall  
29 make available to the bidder not less than 15 calendar days prior  
30 to the date the bids are opened a list or a source of lists of  
31 enterprises which are certified by the authority as small business  
32 enterprises.
- 33 (v) The bidder followed up initial solicitations of interest by  
34 contacting the enterprises to determine with certainty whether the  
35 enterprises were interested in performing specific items of the  
36 project.
- 37 (vi) The bidder provided interested small business enterprises  
38 with information about the plans, specifications, and requirements  
39 for the selected subcontracting or material supply work.

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

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

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

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

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

28 ~~SEC. 3.~~

29 *SEC. 5.* Section 130242 of the Public Utilities Code is amended  
30 to read:

31 130242. (a) In addition to the other powers it possesses, the  
32 Los Angeles County Metropolitan Transportation Authority may  
33 enter into contracts with private entities, the scope of which may  
34 combine within a single contract all or some of the planning,  
35 design, permitting, development, joint development, construction,  
36 construction management, acquisition, leasing, installation, and  
37 warranty of all or components of (1) transit systems, including,  
38 without limitation, passenger loading or intermodal station  
39 facilities, and (2) facilities on real property owned or to be owned  
40 by the authority.

1 (b) The authority may award contracts pursuant to subdivision  
2 (a) after a finding, by a two-thirds vote of the members of the  
3 authority, that awarding the contract under this section will achieve  
4 for the authority, among other things, certain private sector  
5 efficiencies in the integration of design, project work, and  
6 components.

7 (c) A contract awarded pursuant to this section may include  
8 operation and maintenance elements, if the inclusion of those  
9 elements (1) is necessary, in the reasonable judgment of the  
10 authority, to assess vendor representations and warranties,  
11 performance guarantees, or life-cycle efficiencies, and (2) does  
12 not conflict with collective bargaining agreements to which the  
13 authority is a party.

14 (d) Any construction, alteration, demolition, repairs, or other  
15 works of improvement performed under a contract awarded  
16 pursuant to this section shall be considered a public works project  
17 subject to Chapter 1 (commencing with Section 1720) of Part 7 of  
18 Division 2 of the Labor Code, and shall be enforced by the  
19 Department of Industrial Relations in the same way it carries out  
20 this responsibility under the Labor Code.

21 (e) A contract under this section shall be let to the lowest  
22 responsible bidder whose bid is responsive to the criteria set forth  
23 in the invitation for bids, or, at the authority's discretion, to a  
24 contractor chosen by a competitive bidding process that employs  
25 *objective selection criteria that may include, but are not limited*  
26 *to, the proposed design approach, features, functions, life-cycle*  
27 *costs, and other criteria deemed appropriate by the authority*, in  
28 addition to ~~cost~~ *price*. Notice requesting bids or proposals shall be  
29 published at least once in a newspaper of general circulation. For  
30 contracts estimated to exceed ten million dollars (\$10,000,000),  
31 publication shall be made at least 60 days before the receipt of the  
32 bids or price proposals. For contracts estimated not to exceed ten  
33 million dollars (\$10,000,000), publication shall be made at least  
34 30 days before the receipt of the bids or price proposals. The  
35 authority, at its discretion, may reject any and all bids and  
36 proposals, and may readvertise. All bids and price proposals  
37 submitted pursuant to this section shall be presented under sealed  
38 cover and shall be accompanied by one of the following forms of  
39 bidder security: (1) cash, (2) a cashier's check made payable to  
40 the authority, (3) a certified check made payable to the authority,

1 or (4) a bidder's bond executed by an admitted surety insurer,  
2 made payable to the authority. Upon an award, the security of each  
3 unsuccessful bidder shall be returned in a reasonable period of  
4 time, but in no event shall that security be held by the authority  
5 beyond 60 days from the time the award is made.

6 (f) When the design of portions of the project permits the  
7 selection of subcontractors, the contractor shall competitively bid  
8 those portions. The contractor shall provide to the authority a list  
9 of subcontractors whose work is in excess of one-half of 1 percent  
10 of the total project cost as soon as the subcontractors are identified.  
11 Once listed, the subcontractors shall have the rights provided in  
12 the Subletting and Subcontracting Fair Practices Act (Chapter 4  
13 (commencing with Section 4100) of Part 1 of Division 2 of the  
14 Public Contract Code).

15 ~~SEC. 4.~~

16 *SEC. 6.* Section 130243 of the Public Utilities Code is repealed.

17 *SEC. 7.* *If the Commission on State Mandates determines that*  
18 *this act contains costs mandated by the state, reimbursement to*  
19 *local agencies and school districts for those costs shall be made*  
20 *pursuant to Part 7 (commencing with Section 17500) of Division*  
21 *4 of Title 2 of the Government Code.*