

ASSEMBLY BILL

No. 2722

Introduced by Assembly Member Ridley-Thomas

February 21, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2722, as introduced, Ridley-Thomas. Los Angeles County Metropolitan Transportation Authority: contracting.

Existing law creates the Los Angeles County Metropolitan Transportation Authority (LACMTA), with various powers and duties with respect to transportation planning, programming, construction, and operations.

Existing law authorizes LACMTA to provide for a small business preference of 5% of the lowest responsible bidder meeting specifications, with respect to contracts in construction, the construction component of a design-build team, the procurement of goods, or the delivery of services. Existing law also authorizes LACMTA to establish a subcontracting participation goal for small businesses on contracts financed with nonfederal funds and to grant a preference of 5% to the lowest responsible bidders that meet that goal. These small business contract preference provisions do not apply to contracts for professional services involving private architectural, landscape architectural, engineering, land surveying, or construction management.

This bill would delete the restrictions, thereby authorizing LACMTA to expand small business contract preference provisions to these professional services contracts. The bill would provide similar preferences with respect to disabled veteran business enterprises, as

defined. The bill would allow the preferences to be in an amount of up to 10% of the lowest responsible bidder. The bill would authorize LACMTA to establish a mandatory subcontracting participation goal for small business or disabled veteran business enterprises on contracts financed with nonfederal funds and to set additional guidelines for local preference purposes. The bill would authorize LACMTA to award certain contracts of specified values to small business or disabled veteran business enterprises if LACMTA obtains price quotations from 2 or more of those business, or to small businesses or disabled veteran business enterprises that are the lowest responsible bidder or best value proposer among those businesses, as specified.

The bill would also authorize LACMTA, in general, to award annual contracts that do not exceed \$3,000,000 for repair or repetitive work to be done according to unit prices.

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.

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

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

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

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

15 (1) The contract shall be let to the lowest responsible bidder or,
16 in the authority's discretion, to the person who submitted a proposal
17 that provides the best value to the commission on the basis of the
18 factors identified in the solicitation when the purchase price of all
19 supplies, equipment, and materials exceeds one hundred fifty
20 thousand dollars (\$150,000). "Best value" means the overall
21 combination of quality, price, and other elements of a proposal
22 that, when considered together, provide the greatest overall benefit
23 in response to requirements described in the solicitation documents.
24 The contract shall be let to the lowest responsible bidder when the
25 purchase price of the construction of all facilities exceeds
26 twenty-five thousand dollars (\$25,000).

27 (2) The authority shall obtain a minimum of three quotations,
28 either written or oral, that permit prices and terms to be compared
29 whenever the expected expenditure required exceeds three thousand
30 dollars (\$3,000), but not one hundred fifty thousand dollars
31 (\$150,000).

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

36 (4) The authority may participate in a procurement agreement
37 involving other public entities that is identified by a procuring
38 public entity or entities as a cooperative procuring agreement from
39 which other public entities may make purchases or enter into
40 contracts, and the authority may procure, and enter into contracts

1 for, items purchased pursuant to that procurement agreement,
2 notwithstanding that the authority may not be the procuring public
3 entity, provided the procurement agreement is awarded or entered
4 into by either of the following:

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

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

8 (5) (A) Notwithstanding any other provision of law requiring
9 the authority to award contracts to the lowest responsible bidder,
10 the authority may, ~~except as to contracts for professional services~~
11 ~~involving private architectural, landscape architectural, engineering,~~
12 ~~environmental, land surveying, or construction management as~~
13 ~~defined in Sections 4525 and 4529.10 of the Government Code,~~
14 do any of the following in facilitating contract awards to small
15 ~~businesses~~ *business or disabled veteran business enterprises*:

16 (i) Provide for a small *business or disabled veteran business*
17 *enterprise* preference in construction, the construction component
18 of a design-build team, the procurement of goods, or the delivery
19 of services. The preference to a small *business or a disabled*
20 *veteran business enterprise* shall be ~~5~~ *up to 10* percent of the lowest
21 responsible bidder meeting specifications that provide for small
22 *business or disabled veteran business enterprise* participation.

23 (ii) Establish a subcontracting participation goal for small
24 ~~businesses~~ *business or disabled veteran business enterprises* on
25 contracts financed with nonfederal funds and grant a preference
26 of ~~5~~ *up to 10* percent to the lowest responsible bidders who meet
27 the goal.

28 (iii) *Establish a mandatory subcontracting participation goal*
29 *for small business or disabled veteran business enterprises on*
30 *contracts financed with nonfederal funds.*

31 ~~(iii)~~

32 (iv) Require bidders to make a good faith effort, in accordance
33 with the criteria established pursuant to subparagraph (B), prior
34 to the time bids are opened, to comply with the goals and
35 requirements established by the authority relating to participation
36 in the contract by small ~~businesses~~ *business or disabled veteran*
37 *enterprises*.

38 (v) *Award a contract for the acquisition of supplies, equipment,*
39 *materials, or construction that has an estimated value of more*
40 *than three thousand dollars (\$3,000), but not more than two*

1 *hundred fifty thousand dollars (\$250,000), to a small business or*
2 *disabled veteran business enterprise, as long as the authority*
3 *obtains price quotations from two or more small business or*
4 *certified disabled veteran business enterprises.*

5 (vi) *Award a contract for the acquisition of supplies, equipment,*
6 *or materials that has an estimated value of more than two hundred*
7 *fifty thousand dollars (\$250,000), but not more than two million*
8 *dollars (\$2,000,000) to the lowest responsible small business or*
9 *disabled veteran business enterprise bidder or, in the authority's*
10 *discretion, to the small business or disabled veteran business*
11 *enterprise that submitted a proposal that provides the best value*
12 *to the authority on the basis of the factors identified in the*
13 *solicitation.*

14 (vii) *Award a contract for construction that has an estimated*
15 *value of more than two hundred fifty thousand dollars (\$250,000),*
16 *but not more than five million dollars (\$5,000,000), to the lowest*
17 *responsible small business or disabled veteran business enterprise*
18 *bidder.*

19 (viii) *Set additional guidelines for local preference purposes.*

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

21 (i) The bidder attended any presolicitation or prebid meetings
22 that were scheduled by the authority to inform all bidders of the
23 small business *or disabled veteran business* enterprise program
24 requirements for the project for which the contract will be awarded.
25 The authority may waive this requirement if it determines that the
26 bidder is informed as to those program requirements.

27 (ii) The bidder identified and selected specific items of the
28 project for which the contract will be awarded to be performed by
29 small business *or disabled veteran business* enterprises to provide
30 an opportunity for participation by those enterprises.

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

39 (iv) The bidder provided written notice of his or her interest in
40 bidding on the contract to the number of small business *or disabled*

1 *veteran business* enterprises required to be notified by the project
2 specifications not less than 10 calendar days prior to the opening
3 of bids. The authority shall make available to the bidder not less
4 than 15 calendar days prior to the date the bids are opened a list
5 or a source of lists of enterprises which are certified by the
6 authority as small business *or disabled veteran business* enterprises.

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

11 (vi) The bidder provided interested small business *or disabled*
12 *veteran business* enterprises with information about the plans,
13 specifications, and requirements for the selected subcontracting
14 or material supply work.

15 (vii) The bidder requested assistance from small business
16 community organizations; small business contractor groups; local,
17 state, or small business assistance offices; or other organizations
18 that provide assistance in the recruitment and placement of small
19 business *or disabled veteran business* enterprises, if any are
20 available.

21 (viii) The bidder negotiated in good faith with the small business
22 *or disabled veteran business* enterprises, and did not unjustifiably
23 reject as unsatisfactory bids prepared by any small business
24 enterprises, as determined by the authority.

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

29 (x) The bidder's efforts to obtain small business *or disabled*
30 *veteran business* enterprise participation could reasonably be
31 expected by the authority to produce a level of participation
32 sufficient to meet the goals and requirements of the authority.

33 (C) "Small business enterprise" as used in this paragraph; means
34 a business enterprise that is classified as a small business under
35 United States Small Business Administration rules and meets the
36 current small business enterprise size standards found in Part 121
37 of Title 13 of the Code of Federal Regulations appropriate to the
38 type of work the enterprise seeks to perform. The authority may
39 establish limitations regarding the average annual gross receipts
40 of a small business over the previous three fiscal years and establish

1 limitations regarding the personal net worth of the owner of the
2 small business, exclusive of the value of the owner’s personal
3 residence.

4 *(D) “Disabled veteran business enterprise” as used in this*
5 *paragraph means an enterprise that has been certified as meeting*
6 *the qualifications established by subdivision (b) of Section 999 of*
7 *the Military and Veterans Code.*

8 *(6) (A) Notwithstanding any other law, the authority may award*
9 *annual contracts that do not exceed three million dollars*
10 *(\$3,000,000) for repair or other repetitive work, or renovation or*
11 *modification, to be done according to unit prices. The contracts*
12 *shall be awarded to the lowest responsible bidder, and shall be*
13 *based primarily on plans and specifications for typical work. No*
14 *annual contracts may be awarded under these provisions if the*
15 *total cost of the contract exceeds five hundred thousand dollars*
16 *(\$500,000).*

17 *(B) For purposes of this paragraph, “unit price” means the*
18 *amount paid for a single unit of an item of work, and “typical*
19 *work” means a work description applicable universally or*
20 *applicable to a large number of individual projects, as*
21 *distinguished from work specifically described with respect to an*
22 *individual project.*