

ASSEMBLY BILL

No. 2690

Introduced by Assembly Member Ridley-Thomas

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2690, 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 certain contracts financed with nonfederal funds and to grant a preference of 5% to the lowest responsible bidders that meet that goal.

This bill would also authorize LACMTA to establish disabled veteran business enterprise participation goals, and would define “disabled veteran business enterprise” for these purposes.

Existing law imposes various requirements on bidders relative to contracts involving small business enterprise goals.

This bill would delete those requirements and instead authorize LACMTA to require bidders to comply with small business enterprise

and disabled veteran business enterprise goals and requirements established by LACMTA relative to contracts financed with nonfederal funds. The bill would also authorize LACMTA to award contracts under certain circumstances to small business enterprises with respect to work that is set aside for competition among certified small business enterprises.

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

1 time, but in no event shall that security be held by the commission
2 beyond 60 days from the date that the award was made.

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

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

17 (2) The authority shall obtain a minimum of three quotations,
18 either written or oral, that permit prices and terms to be compared
19 whenever the expected expenditure required exceeds three thousand
20 dollars (\$3,000), but not one hundred fifty thousand dollars
21 (\$150,000).

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

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

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

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

38 (5) (A) Notwithstanding any other provision of law requiring
39 the authority to award contracts to the lowest responsible bidder,
40 the authority may, except as to contracts for professional services

1 involving private architectural, landscape architectural, engineering,
 2 environmental, land surveying, or construction management as
 3 defined in Sections 4525 and 4529.10 of the Government Code,
 4 do any of the following in facilitating contract awards to ~~with~~ small
 5 ~~businesses:~~ *business enterprises and disabled veteran business*
 6 *enterprises:*

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

12 (ii) Establish a subcontracting participation goal for small
 13 ~~businesses~~ *business enterprises* on contracts financed with
 14 nonfederal funds and grant a preference of 5 percent to the lowest
 15 responsible bidders who meet the goal.

16 (iii) ~~Require bidders to make a good faith effort, in accordance~~
 17 ~~with the criteria established pursuant to subparagraph (B); bidders,~~
 18 prior to the time bids are opened, to comply with the *small business*
 19 *enterprise and disabled veteran business enterprise* goals and
 20 requirements established by the authority ~~relating to participation~~
 21 ~~in the contract by small businesses:~~ *on contracts financed with*
 22 *nonfederal funds.*

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

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

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

34 ~~(iii) The bidder advertised, not less than 10 calendar days before~~
 35 ~~the date the bids are opened, in one or more daily or weekly~~
 36 ~~newspapers, trade association publications or trade-oriented~~
 37 ~~publications, trade journals, or other media, specified by the~~
 38 ~~authority for small business enterprises that are interested in~~
 39 ~~participating in the project. This clause applies only if the authority~~

1 ~~gave public notice of the project not less than 15 calendar days~~
2 ~~prior to the date the bids are opened.~~

3 ~~(iv) The bidder provided written notice of his or her interest in~~
4 ~~bidding on the contract to the number of small business enterprises~~
5 ~~required to be notified by the project specifications not less than~~
6 ~~10 calendar days prior to the opening of bids. The authority shall~~
7 ~~make available to the bidder not less than 15 calendar days prior~~
8 ~~to the date the bids are opened a list or a source of lists of~~
9 ~~enterprises which are certified by the authority as small business~~
10 ~~enterprises.~~

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

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

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

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

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

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

34 ~~(iv) In awarding contracts to the lowest responsible bidder,~~
35 ~~award the contract to the lowest responsible bidder meeting the~~
36 ~~small business enterprise and disabled veteran business enterprise~~
37 ~~goals.~~

38 ~~(v) Set aside work for competition among certified small~~
39 ~~business enterprises and award a contract to the lowest responsible~~
40 ~~bidder whenever the expected expenditure required exceeds three~~

1 thousand dollars (\$3,000) but is less than a threshold amount
2 established by the authority, as long as price quotations are
3 obtained by the authority from three or more certified small
4 business enterprises.

5 (vi) Set aside work for competition among certified small
6 business enterprises and award a contract to the lowest responsible
7 bidder whenever the expected expenditure required exceeds the
8 authority's threshold amount in clause (v) but is less than five
9 million dollars (\$5,000,000), as long as price quotations are
10 obtained by the authority from three or more certified small
11 business enterprises.

12 (B) A small business enterprise recommended for a contract
13 award through use of a set aside shall be performing a
14 commercially useful function. A small business enterprise shall be
15 presumed to be performing a commercially useful function if it
16 performs and exercises responsibility of at least 30 percent of the
17 total cost of the contract work with its own workforce.

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

29 (D) "Disabled veteran business enterprise" as used in this
30 paragraph has the meaning as defined in Section 999 of the
31 Military and Veterans Code.

32 (E) "Goal" as used in this paragraph means a numerically
33 expressed objective that bidders are required to achieve.