

AMENDED IN ASSEMBLY APRIL 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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: enterprises, and would require the authority to report to the Legislature by December 31, 2017, regarding any contracts awarded in this regard.

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.

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

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

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

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

21 (2) The authority shall obtain a minimum of three quotations,
22 either written or oral, that permit prices and terms to be compared
23 whenever the expected expenditure required exceeds three thousand
24 dollars (\$3,000), but not one hundred fifty thousand dollars
25 (\$150,000).

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

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

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

1 (B) A federal, state, or local public entity.
 2 (5) (A) Notwithstanding any other provision of law requiring
 3 the authority to award contracts to the lowest responsible bidder,
 4 the authority may, except as to contracts for professional services
 5 involving private architectural, landscape architectural, engineering,
 6 environmental, land surveying, or construction management as
 7 defined in Sections 4525 and 4529.10 of the Government Code,
 8 do any of the following in facilitating contract awards with small
 9 business enterprises and disabled veteran business enterprises:
 10 (i) Provide for a small business preference in construction, the
 11 construction component of a design-build team, the procurement
 12 of goods, or the delivery of services. The preference to a small
 13 business shall be 5 percent of the lowest responsible bidder meeting
 14 specifications that provides for small business participation.
 15 (ii) Establish a subcontracting participation goal for small
 16 business enterprises on contracts financed with nonfederal funds
 17 and grant a preference of 5 percent to the lowest responsible bidders
 18 who meet the goal.
 19 (iii) Require bidders, prior to the time bids are opened, to comply
 20 with the small business enterprise and disabled veteran business
 21 enterprise goals and requirements established by the authority on
 22 contracts financed with nonfederal funds.
 23 (iv) In awarding contracts to the lowest responsible bidder,
 24 award the contract to the lowest responsible bidder meeting the
 25 small business enterprise and disabled veteran business enterprise
 26 goals.
 27 (v) Set aside work for competition among certified small
 28 business enterprises and award a contract to the lowest responsible
 29 bidder whenever the expected expenditure required exceeds ~~three~~
 30 ~~five thousand dollars (\$3,000)~~ (\$5,000) but is less than a ~~threshold~~
 31 ~~amount established by the authority, three million dollars~~
 32 (\$3,000,000), as long as price quotations are obtained by the
 33 authority from three or more certified small business enterprises.
 34 *If the authority awards contracts under this clause, the authority,*
 35 *for purposes of legislative oversight, shall, on or before December*
 36 *31, 2017, prepare and submit a report to the Legislature regarding*
 37 *contracts awarded pursuant to this clause. The report shall be*
 38 *submitted in compliance with Section 9795 of the Government*
 39 *Code.*

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

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

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

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

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