

## Assembly Bill No. 2690

### CHAPTER 204

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

[Approved by Governor August 26, 2016. Filed with Secretary of State August 26, 2016.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 2690, 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, and would require the authority to report to the Legislature by December 31, 2017, regarding any contracts awarded in this regard.

*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 fifty thousand dollars (\$150,000). "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 fifty thousand dollars (\$150,000).

(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, 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 with small business enterprises and disabled veteran business enterprises:

(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 provides for small business participation.

(ii) Establish a subcontracting participation goal for small business enterprises 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, prior to the time bids are opened, to comply with the small business enterprise and disabled veteran business enterprise goals and requirements established by the authority on contracts financed with nonfederal funds.

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

(v) Set aside work for competition among certified small business enterprises and award a contract to the lowest responsible bidder whenever the expected expenditure required exceeds five thousand dollars (\$5,000) but is less than three million dollars (\$3,000,000), as long as price quotations are obtained by the authority from three or more certified small business enterprises. If the authority awards contracts under this clause, the authority, for purposes of legislative oversight, shall, on or before December 31, 2017, prepare and submit a report to the Legislature regarding contracts awarded pursuant to this clause. The report shall be submitted in compliance with Section 9795 of the Government Code.

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

(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 Part 121 of Title 13 of the Code of Federal Regulations 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.

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

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