

Senate Bill No. 601

CHAPTER 101

An act to amend Section 20216 of, and to add Section 20217 to, the Public Contract Code, relating to transportation.

[Approved by Governor July 13, 1999. Filed with Secretary of State July 13, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 601, Karnette. Transportation: transit districts: purchase contracts: competitive negotiation.

Existing law authorizes certain transit districts, county transportation commissions, and other transportation entities to purchase specified electronic equipment and apparatus, and specialized rail transit equipment by competitive negotiation, as defined, pursuant to specified procedures and limited by certain conditions.

This bill would extend that authority to all transit agencies, as defined, and would expand the authority to include purchasing buses and passenger ferries.

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

SECTION 1. Section 20216 of the Public Contract Code is amended to read:

20216. (a) Notwithstanding any other provision of law, any contract by the San Francisco Bay Area Rapid Transit District, the Southern California Rapid Transit District, the Golden Gate Bridge, Highway and Transportation District, the San Diego Metropolitan Transit Development Board, the North San Diego County Transit Development Board, a county transportation commission that is subject to the competitive negotiation provisions of Section 20229.1, 20231.5, or 20916.3 of this code, or Section 120224.4, 125228, or 130238 of the Public Utilities Code, a transit district, city, county, city and county, or transportation agency, that is subject to the competitive negotiation provisions of Section 20217, and any other transportation agency that is authorized to use comparable competitive negotiation provisions after July 1, 1992, shall comply with the requirements of this section.

(b) Other than proprietary information, the content of any request for proposal, any proposal received, and any other communications between a transportation agency and a potential bidder on a contract that is subject to subdivision (a) shall be made available to the public no later than the same time that a



recommendation for awarding a contract is made to the governing board or persons responsible for approving the award of a contract to a bidder, except that the price proposed in any bidder's initial proposal shall be available upon the opening of the bid by the agency requesting the proposal.

(c) No person may participate in the evaluation of any proposal for the award of a contract that is subject to subdivision (a) if any of the following conditions apply:

(1) The person has a financial interest in the outcome of the evaluation or the contract.

(2) The person has received a gift of over two hundred fifty dollars (\$250) during the previous 12 months from a bidder directly, or indirectly through an intermediary, if it is known to the person that the gift was in whole or in part funded by the bidder.

(d) The agency board or any person responsible for awarding a contract under this article shall not have any ex parte communication with a bidder or any representative of the bidder except in writing and if the communication is made public.

(e) A contract may not be awarded until 15 days after the staff recommendation has been made available to the public.

(f) An agency using the competitive negotiation process shall maintain in writing, and make available upon request, a complete description of the process and the policies and procedures used by the agency in doing so, including all standards, criteria, public protest procedures, and method of contract award. The agency shall also keep a complete record of its actions on each procurement.

(g) For purposes of this section and Sections 20217, 20229.1, 20231.5, and 20916.3 of this code and Sections 120224.4, 125228, and 130238 of the Public Utilities Code, "competitive negotiation" means a procurement process used by an agency in lieu of a competitive sealed bid process when conditions are not appropriate for the use of sealed bids, and that permits the consideration of price, technical experience, past performance, management, or other factors in selecting the most cost-effective proposal for the manufacture and delivery of specified goods, transit vehicles, or equipment. The process includes negotiations with manufacturers or providers after the receipt of initial proposals during which performance or technical standards and other criteria may be revised in order to secure proposals most advantageous to the purchasing agency or to cure any deficiencies contained in the original proposals.

SEC. 2. Section 20217 is added to the Public Contract Code, to read:

20217. (a) The Legislature finds and declares that the award of purchase contracts by transit agencies under competitive bid procedures may not be feasible for products and materials that are undergoing rapid technological changes or for the introduction of new technologies into agency operations, and that in these



circumstances it is in the public interest to consider the broadest possible range of competing products and materials available, fitness of purpose, manufacturer's warranty, vendor financing, performance reliability, standardization, life cycle costs, delivery timetables, support logistics, and other similar factors in addition to price in the award of these contracts.

(b) Notwithstanding any other provision of law, the governing board of a transit district, city, county, city and county, or transportation agency may direct the purchase of (1) computers, telecommunications equipment, fare collection equipment, radio and microwave equipment, and other related electronic equipment and apparatus used in transit operations ; (2) specialized rail transit equipment, including, but not limited to, railcars; (3) buses; and (4) passenger ferries, by competitive negotiation upon a finding by two-thirds vote of all members of the board that the purchase of those products or materials in compliance with provisions of this code generally applicable to the purchase does not constitute a method of procurement adequate for the agency's needs. This section does not apply to contracts for construction or for the procurement of any product available in substantial quantities to the general public.

(c) Competitive negotiation, for the purposes of this section includes, but is not limited to, all of the following requirements:

(1) A request for proposals shall be prepared and submitted to an adequate number of qualified sources, as determined by the agency in its discretion, to permit reasonable competition consistent with the nature and requirements of the procurement. In addition, a notice of the request for proposals shall be published at least once in a newspaper of general circulation, which shall be made at least 10 days before the date for receipt of the proposals. The agency shall make reasonable efforts to generate the maximum feasible number of proposals from qualified sources, and shall make a finding to that effect before proceeding to negotiate if only a single response to the request for proposal is received.

(2) The request for proposals shall identify all significant evaluation factors, including price, and their relative importance.

(3) The agency shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for contract award.

(4) Prior to making an award, the agency shall prepare a price analysis and shall find that the final negotiated price is fair and reasonable based upon comparable procurement in the marketplace.

(5) The award shall be made to the qualified proposer whose proposal will be most advantageous to the agency with price and other factors considered. If the award is not made to the proposer whose proposal contains the lowest price, the agency shall make a finding setting forth the basis for the award.



(d) The agency may reject any and all proposals and issue a new request for proposals at its discretion.

(e) Upon making an award to a qualified proposer, the agency, upon request, shall make available to all other proposers and to the public, an analysis of the award that provides the basis for the selection of that particular qualified proposal.

(f) A person who submits, or who plans to submit, a proposal, may protest any acquisition conducted in accordance with this section pursuant to protest procedures established by the board as follows:

(1) Protests based on the content of the request for proposals shall be filed with the agency within 10 calendar days after the request for proposals is first advertised in accordance with subdivision (c). The agency shall issue a written decision on the protest prior to opening of proposals. A protest may be renewed by refiling the protest with the agency within 15 calendar days after the staff recommendation for award has been made available to the public as required by subdivision (e) of Section 20216.

(2) Any bidder may protest the recommended award on any ground not based upon the content of the request for proposals by filing a protest with the agency within 15 calendar days after the staff recommendation for award has been made available to the public as required by subdivision (e) of Section 20216.

(3) Any protest shall contain a full and complete written statement specifying in detail the grounds of the protest and the facts supporting the protest. Protesters shall have an opportunity to appear and be heard before the agency prior to the opening of proposals in the case of protests based on the content of the request for proposals, or prior to final award in the case of protests based on other grounds or the renewal of protests based on the content of the request for proposals.

(g) Provisions in any contract concerning women and minority business enterprises, which are in accordance with the request for proposals, shall not be subject to negotiation with the successful bidder.

(h) As used in this section, “agency” includes a transit district, city, county, city and county, or transportation agency when engaged in transit operations.

