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AB-3177 North County Transit District: contracting. (2017-2018)

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Assembly Bill No. 3177

CHAPTER 554

An act to amend Section 20351 of the Public Contract Code, and to amend, renumber, and add Sections 125222 and 125224 of, to add Sections 125225, 125225.1, and 125225.2 to, and to repeal Sections 125221 and 125223 of, the Public Utilities Code, relating to transportation.

[Approved by Governor September 19, 2018. Filed with Secretary of State September 19, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3177, Chávez. North County Transit District: contracting.

Existing law provides for creation of the North County Transit District, with various powers and duties relative to the planning and operation of a transit system in north San Diego County. Existing law authorizes the district to make contracts and to do all acts necessary and convenient for the full exercise of the district's powers in that regard.

The Uniform Public Construction Cost Accounting Act authorizes a public agency, upon the election of its governing board, by resolution, to become subject to uniform construction cost accounting procedures. The act authorizes public projects of \$45,000 or less to be performed by the employees of a public agency, authorizes public projects of \$175,000 or less to be let to contract by informal procedures, and requires public projects of more than \$175,000 to be let to contract by formal bidding procedures.

This bill would authorize the district to opt in to the Uniform Public Construction Cost Accounting Act.

This bill would revise and recast the district's authority to enter into other contracts, which, under existing law, generally requires contracts for the purchase of supplies, equipment, and material that exceed \$50,000 to be awarded to the lowest responsible bidder. The bill would require the board to maintain acquisition and contracting guidelines and to comply with those guidelines in the procurement of all goods and services. The bill would, among other things, generally require contracts for the acquisition or lease of materials, supplies, or equipment with an expected cost that exceeds \$100,000, as authorized by the board, to be made or entered into with the lowest responsible bidder, and would require the board to use a district-approved competitive procurement process in other circumstances. The bill would enact other provisions governing contracts for the acquisition of certain services. The bill would authorize negotiated procurements in certain cases.

This bill would authorize the board to purchase supplies, equipment, or materials in the open market, in certain circumstances, and would authorize the executive director of the board to make expenditures of certain moneys to avert or alleviate damage to, or to repair or restore the damaged or destroyed property of, the district that are necessary to ensure that the district's facilities are available to serve the transportation needs of the general public or to comply with any state or federal regulation with respect to the operation of public transportation services. The bill would also specify procedures for single source procurement.

This bill would authorize a person who submits, or who plans to submit, a proposal in response to a procurement solicitation to protest acquisitions conducted pursuant to some of the processes described above.

Because this bill would impose new duties on local public officials, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 20351 of the Public Contract Code is amended to read:

20351. (a) Contracts for construction in excess of ten thousand dollars (\$10,000) shall be awarded to the lowest responsible bidder after competitive bidding, except in an emergency declared by the vote of two-thirds of the membership of the board.

(b) Notwithstanding any other law, the North County Transit District may opt in to the Uniform Public Construction Cost Accounting Act (Chapter 2 (commencing with Section 22000)).

SEC. 2. Section 125221 of the Public Utilities Code is repealed.

SEC. 3. Section 125222 of the Public Utilities Code is amended and renumbered to read:

125221. The district may contract with any department or agency of the federal government, any other public agency, or any person upon such terms and conditions as the district finds is in its best interest.

SEC. 4. Section 125222 is added to the Public Utilities Code, to read:

125222. (a) The Legislature finds and declares that a compelling interest exists in ensuring all federal, state, local, and private moneys available to the district are captured and used in a timely manner.

(b) In order to maximize the use of federal, state, local, and private funds, and to maintain a competitive posture in seeking supplemental federal funds, the board may establish and use a flexible contracting process, consistent with this division, to maximize its efficient use of public funds.

(c) For the acquisition or lease of materials, supplies, or equipment, except in cases where an item of a specified brand or trade name is the only item that will properly meet the needs of the district or in an emergency declared by the vote of two-thirds of all the members of the board, all contracts shall be awarded as follows:

(1) A contract with an expected cost that exceeds one hundred thousand dollars (\$100,000), as authorized by the board, shall be made or entered into with the lowest responsible bidder that meets the specifications. For purposes of determining the lowest bid, the amount of sales tax shall be excluded from the total amount of the bid.

(2) A contract with an expected cost that does not exceed one hundred thousand dollars (\$100,000) shall be made or entered into using a district-approved competitive procurement process. When the expected cost of a contract exceeds five thousand dollars (\$5,000) and does not exceed one hundred thousand dollars (\$100,000), the district shall seek a minimum of three quotations, either written or oral, to permit comparison of prices and other terms.

(d) For the acquisition of services that are not within a category of services described in Section 4525 of the Government Code, except in cases of an emergency declared by a vote of two-thirds of the membership of the board, all contracts shall be awarded as follows:

(1) A contract with an expected cost that exceeds one hundred thousand dollars (\$100,000) shall be made and entered into by soliciting bids in writing and awarding the contract using a district-approved competitive procurement process, including, but not limited to, a negotiated procurement that may or may not evaluate price as a consideration.

(2) A contract with an expected cost that does not exceed one hundred thousand dollars (\$100,000), shall be made or entered into using a district-approved competitive procurement process. When the expected cost of a service contract exceeds five thousand dollars (\$5,000) and does not exceed one hundred thousand dollars (\$100,000), the district shall seek a minimum of three quotations, either written or oral, to permit comparison of prices and other terms.

(e) The board shall award contracts for architectural, landscape architectural, engineering, environmental, and land surveying services, and construction project management services, as those services are described in Section 4525 of the Government

Code, in accordance with Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(f) Notwithstanding any provision of this chapter, the board may use any approved competitive procurement process authorized for state or local agencies under state or federal law, including, but not limited to, a competitive negotiation process in accordance with Article 7.5 (commencing with Section 20216) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code. The board shall maintain acquisition and contracting guidelines and comply with those guidelines in the procurement of all goods and services.

(g) Provisions that are in a federally funded contract concerning disadvantaged business enterprises and that are in accordance with the request for proposals shall not be subject to negotiation with the successful bidder.

SEC. 5. Section 125223 of the Public Utilities Code is repealed.

SEC. 6. Section 125224 of the Public Utilities Code is amended and renumbered to read:

125223. (a) If, after rejecting bids received under Section 125222, the board determines and declares by a two-thirds vote of all of its members that, in its opinion, the supplies, equipment, or materials may be purchased at a lower price in the open market, the board may proceed to purchase these supplies, equipment, or materials in the open market without further observance of the provisions regarding contracts, bids, or advertisements.

(b) If, after solicitation of bids under Section 125222, the board determines and declares by a majority vote that it has not received a responsive bid, the board may proceed to purchase the supplies, equipment, or materials in the open market without further complying with any contracting, bidding, or advertising requirements.

SEC. 7. Section 125224 is added to the Public Utilities Code, to read:

125224. (a) Upon determining that an immediate remedial measure to avert or alleviate damage to, or to repair or restore the damaged or destroyed property of, the district is necessary to ensure that the district's facilities are available to serve the transportation needs of the general public, or to comply with any state or federal regulations with respect to the operation of public transportation services, and upon determining that available remedial measures, including procurement in compliance with Sections 125222 and 125223, are inadequate, the executive director may authorize the expenditure of moneys previously appropriated by the board specifically for the direct purchase of goods and services, without complying with Section 125222 or 125223.

(b) The executive director, after the expenditure authorized under subdivision (a) has been made, shall submit to the board a full report explaining the necessity for that action.

SEC. 8. Section 125225 is added to the Public Utilities Code, to read:

125225. Notwithstanding any other provision of this article, and upon a finding by two-thirds of all members of the board that a purchase in compliance with Sections 125222 and 125223 does not constitute a method of procurement adequate for the operation of the district's facilities or equipment, the board may direct the procurement of prototype equipment or modifications in an amount sufficient to conduct and evaluate operational testing without further compliance with any contracting, bidding, or advertising requirements.

SEC. 9. Section 125225.1 is added to the Public Utilities Code, to read:

125225.1. Notwithstanding Section 125222, the board may direct the purchase of any supplies, equipment, or materials without complying with any contracting, bidding, or advertising requirements upon a finding by two-thirds of all members of the board that there is only a single source of procurement and that the purchase is for the sole purpose of duplicating, repairing, or replacing supplies, equipment, or materials that are in use, including upgrades or migrations of proprietary intellectual property.

SEC. 10. Section 125225.2 is added to the Public Utilities Code, to read:

125225.2. (a) A person who submits, or who plans to submit, a proposal in response to a procurement solicitation may protest any acquisition conducted pursuant to Sections 125222 and 125223 as follows:

(1) Protests based on the content of the procurement solicitation shall be filed with the district within 10 calendar days after the procurement solicitation is first advertised. The executive director, or the designee of the executive director, shall issue a written decision on the protest prior to the opening of the procurement solicitation. A protest may be renewed by refiling the protest with the board within 15 calendar days after the posting of the notice of the intent to award.

(2) Any bidder may protest the intent to award on any ground not based upon the content of the procurement solicitation by filing a protest with the district within 15 calendar days after the posting of the notice of the intent to award. The executive director, or the designee of the executive director, shall issue a written decision on the protest.

(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. Protestors shall have an opportunity to appear and be heard before the board prior to the opening of the procurement solicitation in the case of protests based on the content of the procurement solicitation or renewed protests based on the content of the procurement solicitation, or prior to final award in the case of protests based on other grounds.

(b) The decision on the protest by the board shall be in writing and shall constitute a final administrative decision for purposes of judicial review pursuant to Section 1094.6 of the Code of Civil Procedure.

SEC. 11. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.