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AB-2271 Los Angeles County Metropolitan Transportation Authority: contracting: local businesses.
(2021-2022)

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Assembly Bill No. 2271

CHAPTER 460

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

[Approved by Governor September 22, 2022. Filed with Secretary of State September 22, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2271, Gipson. Los Angeles County Metropolitan Transportation Authority: contracting: local businesses.

Existing law creates the Los Angeles County Metropolitan Transportation Authority (LA Metro), with various powers and duties with respect to transportation planning, programming, construction, and operations. Existing law authorizes LA Metro 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 LA Metro to set aside work for competition, until January 1, 2024, (1) among certified small business enterprises and award each contract to the certified small business enterprise that is the lowest responsible bidder whenever the expected expenditure required exceeds \$5,000 but is less than \$3,000,000, as specified, and (2) among medium business enterprises for no more than 20 contracts and award each contract to the medium business enterprise that is the lowest responsible bidder whenever the expected expenditure required exceeds \$3,000,000 but is less than \$30,000,000, as provided. Existing law defines a small business enterprise and medium business enterprise for these purposes.

This bill would authorize LA Metro to also provide for a local small business enterprise 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, and to provide the preference to nonlocal businesses if the bid includes a 30% participation by local small business enterprises. The bill would define a local small business enterprise for these purposes. The bill would extend, to January 1, 2028, the authorization described above for LA Metro to set aside work for competition among certified small business enterprises and medium business enterprises and award those contracts to those certified small business enterprises and medium business enterprises that are lowest responsible bidders. The bill would increase the limitation on the expected expenditure required for those contracts LA Metro may award to small business enterprises to be less than \$5,000,000 instead of \$3,000,000. The bill would increase the minimum expected expenditure required for those contracts LA Metro may award to medium business enterprises to be greater than \$5,000,000 instead of \$3,000,000. If LA Metro awards contracts pursuant to these provisions, the bill would require LA Metro to submit a report to the Legislature by December 31, 2026, on the contracts issued between January 1, 2019, and December 31, 2026, including the number of employees working at a medium business enterprise receiving awards, as provided.

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

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, medium business enterprises, local small business enterprises, and disabled veteran business enterprises:

(i) Provide for a small business enterprise 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 enterprise shall be 5

percent of the lowest responsible bidder meeting specifications that provides for small business enterprise participation.

(ii) Provide for a local small business enterprise preference in construction, the construction component of a design-build team, the procurement of goods, or the delivery of services. The preference to a local small business enterprise shall be 5 percent of the lowest responsible bidder meeting specifications that provides for local small business enterprise participation. The authority may also offer the preference to a nonlocal business if the bid includes a 30-percent participation by local small business enterprises.

(iii) 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.

(iv) 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.

(v) 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.

(vi) Until January 1, 2028, set aside work for competition among certified small business enterprises and award each contract to the lowest responsible bidder whenever the expected expenditure required exceeds five thousand dollars (\$5,000) but is less than five million dollars (\$5,000,000), as long as price quotations are solicited by the authority from three or more certified small business enterprises.

(vii) Until January 1, 2028, set aside work for competition among medium business enterprises for no more than 20 contracts and award each contract to the lowest responsible bidder whenever the expected expenditure required exceeds five million dollars (\$5,000,000) but is less than thirty million dollars (\$30,000,000), as long as price quotations are solicited by the authority from three or more medium business enterprises.

(B) If the authority awards contracts pursuant to clause (vi) or (vii) of subparagraph (A), the authority, for purposes of legislative oversight, shall prepare and submit the reports described in this subparagraph to the Legislature regarding contracts awarded pursuant to clauses (vi) and (vii) of subparagraph (A). The reports shall be submitted in compliance with Section 9795 of the Government Code and shall be submitted in accordance with the following:

(i) By December 31, 2023, for contracts issued between January 1, 2019, and December 31, 2023.

(ii) By December 31, 2026, for contracts issued between January 1, 2019, and December 31, 2026. The report shall note the number of employees working at a medium business enterprise receiving awards pursuant to this section.

(C) A small or medium 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.

(D) "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.

(E) "Local 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, 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, and is headquartered in the County of Los Angeles.

(F) "Medium business enterprise" as used in this paragraph means a company that is not a subsidiary of another company and that has a maximum of 250 employees and a maximum of two hundred fifty million dollars (\$250,000,000) in gross annual receipts averaged over three years.

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

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