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AB-499 Los Angeles County Metropolitan Transportation Authority: job order contracting: pilot program. (2023-2024)

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Assembly Bill No. 499

CHAPTER 87

An act to add and repeal Article 24.5 (commencing with Section 20385) of Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to public contracts.

[Approved by Governor July 21, 2023. Filed with Secretary of State July 21, 2023.]

LEGISLATIVE COUNSEL'S DIGEST

AB 499, Luz Rivas. Los Angeles County Metropolitan Transportation Authority: job order contracting: pilot program.

Existing law, the Local Agency Public Construction Act, sets forth procedures that a local agency is required to follow when procuring certain services or work. Existing law also sets forth specific public contracting requirements for certain transit districts. Existing law authorizes certain local agencies to engage in job order contracting, as prescribed.

This bill would establish a pilot program to authorize the Los Angeles County Metropolitan Transportation Authority to use job order contracting as a procurement method. The bill would impose a \$5,000,000 cap on awards under a single job order contract and a \$1,000,000 cap on any single job order. The bill would limit the term of an initial contract to a maximum of 12 months, with extensions as prescribed. The bill would establish various additional procedures and requirements for the use of job order contracting under this authorization. The bill would require the authority, on or before January 1, 2028, to submit to the appropriate policy and fiscal committees of the Legislature a report on the use of job order contracting under the bill. These provisions would be repealed on January 1, 2029.

This bill would make legislative findings and declarations as to the necessity of a special statute for the Los Angeles County Metropolitan Transportation Authority.

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

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

SECTION 1. Article 24.5 (commencing with Section 20385) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 24.5. Job Order Contracting Procurement by the Los Angeles County Metropolitan Transportation Authority

20385. The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature, in enacting this article, to authorize an alternative and optional procedure for bidding of public works projects that is applicable only to the Los Angeles County Metropolitan Transportation Authority to utilize job order contracts

as a delivery method.

(b) The availability of job order contracting as a delivery method for the Los Angeles County Metropolitan Transportation Authority will not preclude the use of traditional delivery methods.

(c) It is the intent of the Legislature that job order contracts of the Los Angeles County Metropolitan Transportation Authority be competitively bid and awarded to bidders providing qualified responsive bids.

(d) The Los Angeles County Metropolitan Transportation Authority should have the authority to use the procurement method outlined in this article for job order contracts, notwithstanding any other applicable procurement requirements.

(e) This article will not affect work that is protected by the Los Angeles County Metropolitan Transportation Authority's collective bargaining agreements.

20385.5. As used in this article, "Los Angeles County Metropolitan Transportation Authority" or "authority" means the Los Angeles County Metropolitan Transportation Authority created by Section 130050.2 of the Public Utilities Code.

20386. (a) (1) The authority may use the procurement method outlined in this article for job order contracts.

(2) The authority shall not contract for work that is protected by applicable collective bargaining agreements. All job order contracts shall comply with all authority collective bargaining agreements.

(3) Job order contracts of the authority shall be competitively bid and awarded to bidders providing qualified responsive bids.

(4) Job order contracts shall be for repair, remodeling, or other repetitive work to be done according to unit prices. No annual contracts may be awarded for any new construction.

(5) A job order contract shall be subject to the project labor agreement between the authority and the Los Angeles/Orange Counties Building and Construction Trades Council, or an amendment or extension of that agreement.

(b) Solicitations for job order contracts shall progress as follows:

(1) The authority shall prepare a set of solicitation documents for job order contracts. The documents shall include a unit price catalog or other established unit prices, job order contract terms, job order contract technical specifications, and any other information the authority deems necessary to adequately describe the authority's needs.

(2) An architect, engineer, consultant, or contractor retained by the authority to assist in the development of the job order contract solicitation documents shall not be eligible to bid or to participate in the preparation of a job order contract bid.

(3) The authority may award multiple job order contracts in response to a single job order contract solicitation.

(c) The authority shall develop a system for evaluating job order contract bids for award of job order contracts.

(d) The award of a job order contract shall progress as follows:

(1) The authority shall prepare a request for bids for job order contracts based on the documents prepared under paragraph (1) of subdivision (b) that invites job order contractors to submit sealed bids in the manner prescribed by the authority.

(2) Each bidding job order contractor shall include in its bid one or more adjustment factors to the established unit prices provided in the request for bids based on the contract technical specifications.

(3) Each bidding job order contractor shall agree to identify any subcontractors to be used for the job orders performed pursuant to the job order contract.

(4) The award of job order contracts, if any, shall be made to a job order contractor or to job order contractors that the authority determines to be qualified and responsive based upon preestablished criteria to be determined by the authority.

(5) The job order contractors shall comply with the authority's project labor agreement, as applicable.

(6) Notwithstanding paragraph (4), the authority, by a process determined by the authority, may award any job order for repair or renovation work with a value equal to or less than two hundred fifty thousand dollars (\$250,000) to a job order contractor that is also a certified small business enterprise, as established by the authority's small business enterprise certification process or any similar certification process acceptable to the authority, or to a job order contractor that is also a disabled veterans business enterprise, as certified by the Department of General Services.

20386.5. (a) The maximum total dollar amount that may be awarded under a single job order contract shall not exceed five million dollars (\$5,000,000) in the initial contract term of the job order contract. No single job order may exceed one million dollars (\$1,000,000).

(b) Job order contracts may be executed for an initial contract term of no more than 12 months and may be extended or renewed for two subsequent annual terms and a maximum of ten million dollars (\$10,000,000) over the subsequent two terms of the contract.

(c) Work shall not be split or separated into smaller job orders for the purpose of evading the cost limitation provisions of this article.

(d) Dollar amounts specified in this section may be adjusted annually to reflect the percentage change in the California Consumer Price Index.

20387. (a) All work bid under job order contracts shall comply with Chapter 4 (commencing with Section 4100) of Part 1 and is subject to all of the penalties and provisions set forth in that chapter.

(b) For purposes of this article, if a job order contractor chooses to use a subcontractor, the job order contractor shall verify that the subcontractor possesses and maintains the appropriate licenses and credentials required.

(c) If the authority, after conducting an administrative due process review, determines that there has been a violation of Chapter 4 (commencing with Section 4100) of Part 1, including, but not limited to, bid shopping by the job order contractor, the authority may terminate the job order contract, declare the contractor ineligible for future job order contracts for a period of time to be determined by the authority, or withdraw authorization for the contractor to proceed with awarded work.

20387.3. (a) A job order contract shall set forth in the general conditions of the job order contract the party or parties responsible for seeing that Article 2 (commencing with Section 1770) of Chapter 1 of Part 7 of Division 2 of the Labor Code is complied with.

(b) For purposes of job order contracting, prevailing wages shall apply to all work ordered under the job order contract regardless of thresholds set forth in Section 1771.5 of the Labor Code.

(c) The job order contractor shall pay the prevailing wage in effect at the time the job order contract is issued by the authority and all increases as published by the Department of Industrial Relations for the term of the job order contract, including all overtime, holiday, and shift provisions published by the Department of Industrial Relations.

(d) The authority shall designate one individual to act as a monitor to inspect job sites for labor compliance violations at the request of the designated labor representative in its project labor agreement.

20387.5. In order to prevent fraud, waste, and abuse, the authority shall prepare for each individual job order developed under a job order contract an independent cost estimate. The estimate shall be prepared prior to the receipt of any job order contractor's estimate for the work and shall be compared to the job order contractor's estimate to determine the reasonableness of that estimate before issuance of any job order. If the authority finds the job order contractor's estimate to perform work for a given job order to be unreasonable, not cost effective, or undesirable, the authority may elect not to issue the job order to the job order contractor, and may, instead, utilize any other available procurement procedures or choose not to move forward with the work.

20388. (a) The authority shall submit to the appropriate policy and fiscal committees of the Legislature, on or before January 1, 2028, a report on the use of job order contracting under this article. The report shall include, but shall not be limited to, all of the following information:

(1) A description of the authority's system for evaluating job order contract bids for award of job order contracts, including, but not limited to, the criteria used by the authority to determine a qualified and responsive job order contractor.

(2) A description of each job order contract awarded and the contractor awarded the contract.

(3) An assessment of the use of job order contracting under this article.

(b) A report to be submitted pursuant to subdivision (a) shall be submitted in compliance with Section 9795 of the Government Code.

20389. This article shall remain in effect only until January 1, 2029, and as of that date is repealed.

SEC. 2. The Legislature finds and declares that a special statute is necessary and that a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the need for a pilot program to

determine the potential benefits of job order contracting to a large transportation agency without setting policy for smaller local agencies.