

Date of Hearing: August 31, 2018

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1205 (Jones-Sawyer) – As Amended August 20, 2018

SUBJECT: Los Angeles County Metropolitan Transportation Authority: contracting.

SUMMARY: Allows the Los Angeles County Metropolitan Transportation Authority (LA Metro) to facilitate contract awards with medium business enterprises (MBEs) and makes changes to LA Metro's authority to facilitate contract awards with small business enterprises (SBEs) and disabled veteran business enterprises (DVBES).

The Senate amendments delete the Assembly version of this bill, and instead:

- 1) Add MBEs to the statutes that allow LA Metro to facilitate contract awards with SBEs and DVBES.
- 2) Limit LA Metro's authority to set aside work for competition among SBEs until January 1, 2024, and make the following additional changes to LA Metro's SBE set-aside program:
 - a) Remove a requirement that LA Metro obtain three or more price quotations from SBEs, and instead, require LA Metro to solicit these quotations;
 - b) Remove a requirement that LA Metro report to the Legislature by December 31, 2017, if it awards contracts under its SBE set-aside program and, instead, require LA Metro to report to the Legislature as follows:
 - i) By December 31, 2020, for contracts issued between January 1, 2019, and December 31, 2020; and,
 - ii) By December 31, 2023, for contracts issued between January 1, 2019, and December 31, 2023.
- 3) Allow, until January 1, 2024, LA Metro to set aside work for competition among MBEs for no more than 20 contracts and award each contract to the lowest responsible bidder whenever the expected expenditure required exceeds \$3 million but is less than \$30 million, as long as LA Metro solicits price quotations from three or more MBEs.
- 4) Require LA Metro, if it awards contracts under its MBE set-aside program, to report to the Legislature in accordance with the requirements of 2) b), above.
- 5) Require an MBE recommended for a contract award through use of a set aside to be performing a commercially useful function, which is presumed to be the case if the MBE performs and exercises responsibility of at least 30% of the total cost of the contract work with its own workforce.
- 6) Define "medium business enterprise" to mean a company that is not a subsidiary of another company and that has a maximum of 250 employees and a maximum of \$250 million in gross annual receipts averaged over three years.

EXISTING LAW:

- 1) Allows LA Metro, except as to contracts for professional services involving private architectural, landscape architectural, engineering, environmental, land surveying, or construction management, to do any of the following in facilitating contract awards with SBEs and DVBEs:
 - a) 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% of the lowest responsible bidder meeting specifications that provides for small business participation;
 - b) Establish a subcontracting participation goal for SBEs on contracts financed with nonfederal funds and grant a preference of 5% to the lowest responsible bidders who meet the goal;
 - c) Require bidders, prior to the time bids are opened, to comply with the SBE and DVBE goals and requirements established by LA Metro on contracts financed with nonfederal funds;
 - d) In awarding contracts to the lowest responsible bidder, award the contract to the lowest responsible bidder meeting the SBE and DVBE goals; and,
 - e) Set aside work for competition among certified SBEs and award a contract to the lowest responsible bidder whenever the expected expenditure required exceeds \$5,000 but is less than \$3 million, as long as price quotations are obtained by LA Metro from three or more certified SBEs.
- 2) Requires LA Metro, if it awards contracts under its authority to set aside work for SBEs, to prepare and submit a report regarding such contracts to the Legislature by December 31, 2017.
- 3) Requires an SBE recommended for a contract award through use of a set aside to be performing a commercially useful function, which is presumed to be the case if the SBE performs and exercises responsibility of at least 30% of the total cost of the contract work with its own workforce.
- 4) Defines "small business enterprise" to mean a business enterprise that is classified as a small business under United States Small Business Administration rules and meets the current SBE 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.
- 5) Allows LA Metro to establish limitations regarding the average annual gross receipts of a small business over the previous three fiscal years and limitations regarding the personal net worth of the owner of the small business, exclusive of the value of the owner's personal residence.
- 6) Defines "disabled veteran business enterprise" to have the meaning as defined in California's DVBE Program pursuant to the Military and Veterans Code.

- 7) Defines "goal" as used in the statutes governing LA Metro's authority to facilitate contract awards with SBEs and DVBEs to mean a numerically expressed objective that bidders are required to achieve.
- 8) Allows, pursuant to the Small Business Procurement and Contract Act (Act), state agencies to award contracts for goods, services, or information technology to a certified small business or a DVBE without complying with formal advertising and bidding requirements if the following conditions are met:
 - a) The estimated contract value is greater than \$5,000 but less than \$250,000; and,
 - b) Quotes are obtained from two or more small businesses or DVBEs.
- 9) Allows, pursuant to the Act, state agencies to award contracts for construction to a certified small business or a DVBE without complying with formal advertising and bidding requirements if the following conditions are met:
 - a) The contract award is greater than \$5,000 but less than \$250,000, adjusted for inflation, as specified; and,
 - b) Written bids are obtained from two or more small businesses or from two or more DVBEs.

FISCAL EFFECT: None

COMMENTS:

- 1) **Background.** Small business set-asides help small businesses win government contracts by "setting aside" specific government purchases exclusively for participation by small business concerns. The contracts are still competitive, but the competition is narrowed to small businesses only.

California has had a small business preference within the state's procurement process for more than 30 years, and a DVBE component for more than 15 years. Some cities have programs that grant preference to local or regional small businesses. These may be in lieu of, or in addition to, preferences for small businesses in general. These current programs are governed by a combination of state law and city charter provisions.

- 2) **Small and Medium-Sized Enterprises.** According to the Organization for Economic Co-operation and Development, "Small and medium-sized enterprises (SMEs) are non-subsidiary, independent firms which employ fewer than a given number of employees. This number varies across countries. The most frequent upper limit designating an SME is 250 employees, as in the European Union. However, some countries set the limit at 200 employees, while the United States considers SMEs to include firms with fewer than 500 employees. Small firms are generally those with fewer than 50 employees, while micro-enterprises have at most 10, or in some cases 5, workers.

"Financial assets are also used to define SMEs. In the European Union, a new definition came into force on 1 January 2005 applying to all Community acts and funding programmes

as well as in the field of State aid where SMEs can be granted higher intensity of national and regional aid than large companies. The new definition provides for an increase in the financial ceilings: the turnover of medium-sized enterprises (50-249 employees) should not exceed EUR 50 million; that of small enterprises (10-49 employees) should not exceed EUR 10 million while that of micro firms (less than 10 employees) should not exceed EUR 2 million. Alternatively, balance sheets for medium, small and micro enterprises should not exceed EUR 43 million, EUR 10 million and EUR 2 million, respectively."

In this country, the United States Small Business Administration designates SMEs. The primary metrics used to determine if a U.S. company is an SME is the amount of revenue the company earns per year and the size of its workforce. The North American Industry Classification System creates size standards for SMEs.

- 3) **LA Metro's SBE and DVBE Contracting Authority.** AB 1341 (Price), Chapter 494, Statutes of 2010, authorized LA Metro to facilitate contract awards to small businesses on contracts over \$100,000. AB 2440 (Lowenthal), Chapter 703, Statutes of 2012, eliminated the \$100,000 limitation on LA Metro's authority to facilitate contract awards to small businesses. In facilitating SBE contracts, LA Metro may provide a bid preference of 5% to the lowest responsible bidder. LA Metro can also establish a subcontracting participation goal for SBEs on certain contracts financed with nonfederal funds and give a preference of 5% to the lowest responsible bidders that meet that goal.

AB 2690 (Ridley-Thomas), Chapter 204, Statutes of 2016, significantly strengthened LA Metro's authority to facilitate contracting with SBEs and DVBEs. AB 2690 expanded the 5% bid preference for SBEs to also include DVBEs, required bidders to meet (rather than make a good faith effort to meet) SBE and DVBE goals, and required these goals to carry a numerically expressed objective that bidders must achieve. In awarding contracts to the lowest responsible bidder, LA Metro was allowed to award the contract to the lowest responsible bidder who meets the SBE and DVBE goals.

AB 2690 also allowed LA Metro to set aside contracts for competition by certified SBEs, as long as LA Metro obtains quotes from three or more certified SBEs. These SBEs must perform and exercise responsibility for at least 30% of the total cost of the contract work with their own workforce.

- 4) **Author's Statement.** According to the author, "LA Metro serves approximately 32,371,640 riders in Los Angeles County, and these riders are predominately minorities and low-income individuals. To ensure that all of these riders receive adequate access to reliable public transportation, LA Metro has focused on new construction projects for rail and bus lines. These projects present an opportunity for small and medium sized businesses to develop new partnerships with one of the largest transportation authorities in the state. However, current law limits LA Metro's ability to contract with medium sized businesses, and bid requirements for small businesses resulted in 13 out of 19 projects having to return to the general applicant pool in 2017. Removing the bid requirement in current law would help minority owned businesses compete against larger firms, and would allow for increased economic prosperity for all of Los Angeles. Finally, providing for a separate medium business set aside would provide a pathway for these businesses to grow and further contribute to their communities."

- 5) **Bill Summary.** This bill establishes a pilot program for LA Metro to set aside work for competition among MBEs, and makes changes to LA Metro's set-aside program for SBEs.
- a) **MBE Provisions.** This bill allows LA Metro to set aside work for competition among MBEs for contracts between \$3 million and \$30 million. This pilot is limited to no more than 20 contracts and ends January 1, 2024. LA Metro must solicit price quotations from at least three MBEs and award contracts on a low-bid basis. The bill requires an MBE recommended for a contract award through use of a set aside to be performing a commercially useful function, which means the MBE must perform and exercise responsibility for at least 30% of the total cost of the contract with its own workforce.

If LA Metro elects to use this authority, it must report to the Legislature, as follows:

- i) By December 31, 2020, for contracts issued between January 1, 2019, and December 31, 2020; and,
- ii) By December 31, 2023, for contracts issued between January 1, 2019, and December 31, 2023.

The bill defines "medium business enterprise" to mean a company that is not a subsidiary of another company and that has a maximum of 250 employees and a maximum of \$250 million in gross annual receipts averaged over three years.

- b) **SBE Provisions.** This bill eliminates a requirement that LA Metro **obtain** three or more price quotations from SBEs, and instead requires LA Metro to **solicit** these quotations. The bill also removes a requirement that LA Metro report to the Legislature on its SBE program by December 31, 2017, and applies instead the same reporting requirements outlined above for its MBE program. This bill adds a time limit of January 1, 2024, to LA Metro's SBE set-aside program.

This bill is sponsored by LA Metro.

- 6) **Arguments in Support.** LA Metro, sponsor of this bill, writes, "AB 1205...seeks to make a small change to the process by which LA Metro awards contracts under the Small Business 'set-aside' program. Specifically, LA Metro is seeking to change the requirements to be consistent with Federal procurement processes by requiring that 3 bids be solicited by the agency. LA Metro also seeks to expand the set-aside program to create a similar program for Medium Size businesses. This change is in response to businesses that do not meet most small business requirements, however are too small to be considered a 'Prime' contractor. This bill will allow LA Metro to effectively promote and facilitate increased participation and opportunities of SBEs and Medium Size Business enterprises in public contracting with LA Metro."
- 7) **Arguments in Opposition.** None on file.
- 8) **Substantially Amended.** The provisions of this bill have not been heard in an Assembly policy committee this legislative session.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Metropolitan Transportation Authority [SPONSOR]

Opposition

None on file

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