

Date of Hearing: April 13, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Susan Talamantes Eggman, Chair

AB 1757 (Waldron) – As Amended March 17, 2016

SUBJECT: North County Transit District.

SUMMARY: Increases the North County Transit District's (District) bid threshold for construction projects and raises the compensation limits for the District's Board of Directors (Board). Specifically, **this bill:**

- 1) Increases, from \$10,000 to \$50,000, the threshold above which the District must award contracts for construction to the lowest responsible bidder after competitive bidding, except in an emergency declared by a two-thirds vote of the Board.
- 2) Increases, from \$75 to \$150, the compensation to be paid to Board members and their alternates for each day the member or alternate attends meetings of the Board, and increases the total amount of this compensation from \$300 per month to \$750 per month.
- 3) Removes a requirement that the Board adopt a resolution before allowing Board members and alternates to receive compensation for representing the Board at meetings of other governmental entities and public agencies, and increases the compensation for these activities to the same amounts in 2), above.
- 4) Makes technical corrections.

EXISTING LAW:

- 1) Generally requires, pursuant to the Public Contract Code (PCC) and with many specific exceptions, public agencies to obtain competitively bid contracts for construction projects that cost more than \$15,000. This amount varies depending on the public agency and whether it is a city, county, special district, or school, and other variables. This limit is commonly referred to as the "force account."
- 2) Establishes the California Uniform Public Construction Cost Accounting Act (CUPCCA), which authorizes public agencies to voluntarily use their own employees on construction projects that cost up to \$30,000, and to use informal competitive bidding procedures for construction projects that cost up to \$125,000, if they agree to cost accounting procedures pursuant to the CUPCCA.
- 3) Requires the District to award contracts for construction in excess of \$10,000 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.
- 4) Requires each member of the Board, including alternate members that are appointed, to be paid \$75 for each day the member or alternate attends meetings of the Board, not to exceed \$300 in any month, as well as necessary and reasonable expenses in performing duties as a Board member.

- 5) Authorizes the Board, by resolution, to compensate members and alternates, in addition to the compensation allowed in 4), above, for representing the Board at specified meetings of other governmental entities and public agencies. Allows compensation to be in the same amounts specified in 4), above.

FISCAL EFFECT: This bill is keyed fiscal.

COMMENTS:

- 1) **Bill Summary.** This bill raises the District's bid threshold for construction contracts that must be put out to bid, from the current \$10,000 to a proposed \$50,000. This bill also raises compensation amounts that must be paid to Board members and alternates for each meeting of the District's Board, and for meetings of other governmental entities and public agencies that Board members or alternates attend as representatives of the Board, from \$75 to \$150 per meeting. This bill also raises the monthly cap for this compensation from \$300 to \$750. Finally, this bill removes a requirement that the District's Board pass a resolution to authorize Board members or alternates to receive compensation for attending meetings of other governmental entities and public agencies. This bill is sponsored by the District.
- 2) **Author's Statement.** According to the author, "In 2005, Senator Kehoe successfully passed legislation that revised various statutes for neighboring transit services. Among its provisions, this legislation (SB 959) created a much more uniform set of contracting and procurement statutes, including links to already approved methods found elsewhere in statute.

"The District's contracting statutes are relatively lean and have remained largely unchanged over the years. In order to ensure the maximum amount of revenues are directed back into providing services for its riders, the District always strives to identify ways to be efficient in its procurement policies. By aligning its contracting statutes with those of other transit agencies, the District will ensure compliance with approved contracting methods, as well as realize the potential for savings through efficient procurement.

"In a similar vein, currently, District Board Members are compensated at \$75 per meeting, an amount that has remained unchanged since 1988. This amount is also only half of what representatives of other local and regional boards receive for the same commitment of time. In addition, Board Members routinely serve on other regional boards on behalf of the District, where their counterparts receive compensation that is double their amount.

"This proposal would provide consistent, approved procurement options for the District in order to obtain the best value for riders and taxpayers. The proposal would also ensure compensation for Board Members is commensurate with that of other regional entities they serve on for the District."

- 3) **Background.** SB 959 (Kehoe), Chapter 557, Statutes of 2005, revised and updated the authority of the San Diego Metropolitan Transit Development Board (MTDB), including increasing the threshold amount for procurement and bidding for various purchases and services.

SB 1703 (Peace), Chapter 743, Statutes of 2002, created a consolidated transportation agency in San Diego from specified existing agencies, including the San Diego Association of Governments (SANDAG), the MTDB, and the District, and authorized that agency to assume certain responsibilities. SANDAG is responsible for many public transit and long-term transportation planning and programming responsibilities that formerly resided with MTDB and the District Board. SB 1703 established the general authority and powers of the revamped SANDAG in an attempt to create an agency with the power to develop a comprehensive regional public transportation system. In addition to the planning functions, SB 1703 transferred project development and construction activities to SANDAG, except on certain existing projects, and sought to refocus MTDB and the District primarily as agencies operating public transit services.

- 4) **District Audits.** In 2012, the District requested an independent auditor to perform an analysis of contract administration functions at the District. The SC&H Group performed an audit and documented 19 findings outlined by observations, risks, and recommendations. While all of the issues identified in the report are related to contract administration, the following issues most closely relate to the contents of this bill. *The Review of Contract Administration performed for North County Transit District*, dated September 14, 2012, states the following:

"Avoidance of Competitive Procurement. Observation: It appears that sole source procurements are overused without appropriate justification. Further, it appears that sole source procurements can be used as 'work arounds' to avoid the competitive procurement process. Additionally, the on-call policy suggests, that for on call engineering tasks greater than \$100,000, the PM [project manager] should solicit more than one proposal from on-call vendors for specific tasks to be procured; however, that policy is not enforced. It was noted that competitively procured on-call contracts are FTA (Federal Transit Administration) compliant and has been an efficient process to meet engineering and consultant needs without having to procure each task separately through the competitive procurement process.

"Risk: Attempting to avoid the competitive procurement process by using sole source procurements may result in increased regulatory scrutiny and potential fines. Failing to adhere to the on-call policy could potentially prevent the District from receiving the best value.

"Policies and Procedures. Observation: It appears that the current Procurement Manual is out of date and in certain instances, inaccurate. The references do not agree to the appendices, appendices are outdated, and there are references to software, documentation, and positions that are no longer used. It does not appear that the CAs [contract administrator] are following all procedures outlined in the manual. Additionally, it appears that the CAs are performing duties that are not detailed in the manual, as there is no clear guidance as to who should perform these duties.

"Risk: The lack of updated policies and procedures may prevent Management from establishing appropriate internal controls and may create an opportunity for the District staff to continue relying on 'work-arounds' rather than adhering to the implemented processes."

Following the audit, the District released a Management Action Plan on June 20, 2013, stating that 11 of the 19 recommended improvements were completed. The Management Action Plan stated the following, "On-call contracts are competitively procured and rates are established as part of the final contract. In September 2012, the Executive Director restated FTA guidance and the District's position on competitive and sole source procurements. A sole source procurement review committee has been established. The sole source procurement request process and form were updated. Updated Procurements and Contracts Administration Manual will be completed by December 2013."

Despite the Management Action Plan of 2013, the addition of two staff positions for procurement, and a \$157,000 contract with an outside consulting group to help prepare the District for its triennial review by the FTA, an additional audit in 2014 by the Calyptus Consulting Group Inc. found multiple problems with the District's procurement process, particularly with its compliance with mandates for full and open competition. The FTA's 2015 review also found deficiencies with the District's performance in complying with federal requirements for contract administration. Nine of the 13 problems identified in the FTA's review were in procurement.

- 5) **The CUPCCA.** The CUPCCA was created in 1984 as a voluntary program intended to provide flexibility in the execution of public works projects, accelerate project delivery, and provide uniformity in the cost accounting standards for construction contracts that are used to determine when projects must be put out for bid.

The CUPCCA allows public agencies to use their own employees for construction projects that cost up to \$30,000 if they agree to the project cost accounting standards prescribed by the CUPCCA. If they do not agree to the standards prescribed by the CUPCCA, public agencies are required to let out for bid construction projects that will cost more than \$15,000, although this amount can vary widely depending on the public agency. The CUPCCA also allows participating public agencies to use informal competitive bidding procedures for projects that will cost up to \$125,000.

Generally, public agencies that do not participate under the provisions of the CUPCCA may use informal bidding procedures for contracts that cost up to their force account limit. Participating agencies include cities, counties, community college districts, school districts, and special districts.

- 6) **Policy Consideration.** The Committee may wish to consider the following: this bill provides that if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement to local agencies for those costs shall be made pursuant to current law governing state mandated local costs. This bill is sponsored by the District; therefore, the mandate language should state that no reimbursement is required because the local agency is requesting this authority.
- 7) **Committee Amendment.** The Committee may wish to consider the following amendment: given the continued challenges the District has faced with its procurement processes, the Committee may wish to consider striking Section 1 of the bill, which raises the District's bid threshold.

- 8) **Related Legislation.** AB 2030 (Mullin) of 2016 makes a number of changes to the bid thresholds for the San Francisco Bay Area Transit District and the San Mateo County Transit District. AB 2030 is pending in this Committee.
- 9) **Previous Legislation.** AB 1988 (Chavez) of 2014 would have authorized the District to use any procurement method authorized for state or local agencies under state or federal law and made several other changes to the District's Act, including increasing the compensation for Board members and alternates from \$75 to \$150 for each day the member or alternate attends a meeting of the Board and increasing the monthly cap from \$300 to \$600. AB 1988 was held in this Committee.

AB 2447 (Cooley) of 2014 would have raised the bid threshold, from \$5,000 to \$25,000, above which the Sacramento Regional Transit District must award construction contracts for transit works or transit facilities to the lowest responsible bidder. AB 2447 was held in this Committee.

SB 959 (Kehoe), Chapter 557, Statutes of 2005, increased the threshold amount for procurement and bidding for various purchases and services for the MTDB, including an increase on the bid amount for construction contracts from \$20,000 to \$50,000.

- 10) **Arguments in Support.** The District, sponsor of this measure, states, "This is an important effort to ensure parity of the District's board compensation and contracting services with neighboring agencies, while maintaining the integrity of a fair and competitive bidding process. This measure will put the District in line with other transit agencies in the region, and will result in improved contracting due to more time efficiency and reduction of costs.
- 11) **Arguments in Opposition.** The State Building and Construction Trades Council, in opposition, states, "This legislation substantially increases the competitive bidding threshold and in turn, the dollar amount allowed to utilize 'force account' in-house employees to perform construction projects for the North County Transit District. This change will eliminate the opportunity for private construction contractors to bid on the work, reduces the job potential for their local workforce to be employed on these projects, and prevents the public from knowing if they are getting the best value for their tax dollars. Competitive bid thresholds are designed to protect taxpayer dollars by ensuring competition, public scrutiny, and openness.

"The Legislature addressed the 'force account' issue in total in 1983 when it created the California Uniform Public Construction Cost Accounting Act which provides public agencies (on a voluntary opt-in basis) much larger competitive bidding, informal bidding, and force account thresholds in exchange for a true cost accounting procedure. This Act...is designed to protect public funds, provide participating agencies flexibility and prevent consternation in the Legislature over these types of issues. We would suggest that a better course of action for the North County Transit District would be to look into opting into the California Uniform Public Construction Cost Accounting Act."

REGISTERED SUPPORT / OPPOSITION:

Support

North County Transit District [SPONSOR]

Opposition

Air Conditioning Sheet Metal Association
Air-conditioning & Refrigeration Contractors Association
California Chapters of the National Electrical Contractors Association
California Legislative Conference of the Plumbing, Heating and Piping Industry
California State Council of Laborers
California-Nevada Conference of Operating Engineers
Construction Industry Force Account Council
State Building and Construction Trades Council
United Contractors
Wall and Ceiling Alliance

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