

Date of Hearing: April 20, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 1833 (Ward) – As Introduced February 7, 2022

**SUBJECT:** San Diego Metropolitan Transit Development Board: North County Transit District: consolidated agency: public contracting.

**SUMMARY:** Changes various bidding thresholds for the San Diego Metropolitan Transit System (MTS), the North County Transit District (NCTD), and the San Diego Association of Governments (SANDAG) to align with the federal simplified acquisition threshold (SAT). Specifically, **this bill:**

- 1) Replaces a number of existing bid thresholds for MTS, NCTD and SANDAG to an amount equal to or in excess of the SAT and the corresponding micro-purchase threshold. These include:
  - a) For MTS:
    - i) The current \$100,000 threshold for the acquisition or lease of materials, supplies, and equipment, as specified.
    - ii) The current \$100,000 threshold for the acquisition of services, as specified.
    - iii) The current \$100,000 threshold for contracts for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, as specified.
  - b) For NCTD:
    - i) The current \$100,000 threshold for the acquisition or lease of materials, supplies, and equipment, as specified.
    - ii) The current \$100,000 threshold for the acquisition of services, as specified.
    - iii) Contracts for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, as specified.
  - c) For SANDAG:
    - i) The current \$50,000 threshold for the acquisition or lease of materials, supplies, and equipment, as specified.
    - ii) The current \$100,000 threshold for the acquisition of services, as specified.
    - iii) The current \$50,000 threshold for contracts for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services, as specified.

- 2) Requires, for all three agencies' contracts for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services in amounts equal to or in excess of the SAT, the respective board to solicit statements of qualifications and proposals in writing. For these contracts in amounts equal to or in excess of the micro-purchase threshold and less than the SAT, the board shall seek a minimum of three quotations, either written or oral, to permit comparison of prices and other terms and allow the board to determine the most highly rated offeror.
- 3) Provides the following definitions for the purposes of this bill:
  - a) "Micro-purchase threshold" has the same meaning as defined in Section 2.101 of Title 48 of the Code of Federal Regulations, including future amendments to that section.
  - b) "Simplified acquisition threshold" has the same meaning as defined in Section 2.101 of Title 48 of the Code of Federal Regulations, including future amendments to that section.
- 4) Makes conforming and technical changes.

**EXISTING LAW:**

- 1) Creates a consolidated transportation agency in San Diego, including SANDAG, MTS, and NCTD, and authorizes that agency to assume certain responsibilities.
- 2) Requires, pursuant to the Public Contract Code, public agencies to obtain competitively bid contracts for construction projects, and contracts for supplies, equipment, and materials above a specified cost threshold. This amount varies depending on the public agency and whether it is a city, county, special district, or school, and other variables.

**FISCAL EFFECT:** This bill is keyed fiscal.

**COMMENTS:**

- 1) **MTS, NCTD and SANDAG.** The Legislature created MTS and NCTD in 1975 to plan, construct, and operate public transit systems in San Diego County. SB 1703 (Peace), Chapter 743, Statutes of 2002, created a consolidated transportation agency in San Diego County from these existing agencies and authorized that agency to assume certain responsibilities. SANDAG is now the consolidated agency responsible for many public transit and long-term transportation planning and programming responsibilities that formerly resided with MTS and NCTD.

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 MTS and NCTD primarily as agencies operating public transit services.

- 2) **Federal Acquisition Thresholds.** The SAT is set by the federal government for its Simplified Acquisition Procedures (SAP), which are designed to reduce the administrative burden of awarding smaller procurements. SAPs employ streamlined contracting procedures, such as allowing quotations (including oral quotations) instead of requiring full-blown bids,

requiring less stringent reporting, and setting simpler rules for subcontracting. Federal acquisition thresholds are adjusted every five years and published in the Federal Register. The adjustment in 2015 raised the micro-purchase threshold to \$3,500 and retained the SAT ceiling at \$150,000. These purchasing limits apply to federal grants awarded to transit agencies.

The National Defense Authorization Acts for Fiscal Years 2017 and 2018 raised the threshold for micro-purchases under Federal financial assistance awards to \$10,000, and increased the SAT to \$250,000. However, the increase in the SAT to \$250,000 does not apply for purposes of the Federal Transit Administration's (FTA) Buy America program, as the small purchase amount is established at \$150,000 in FTA's statute and is no longer tied to the SAT. FTA's Buy America program prevents FTA from obligating monies that may be appropriated to carry out its program for a project unless the steel, iron, and manufactured goods used in the project are produced in the United States. FTA's Buy America requirements apply to third-party procurements by FTA grant recipients.

- 3) **Author's Statement.** According to the author, "Existing law requires transit agencies to follow specified procedures when contracting with certain services, acquiring or leasing materials, supplies or equipment, architectural, engineering, environmental, land surveying, or construction project management services. These procedures differ greatly depending on the cost of the contract or procurement. AB 1833 establishes uniform procurement thresholds for San Diego local public transportation agencies with the FTA and allows these agencies to use and maximize taxpayer dollars efficiently."
- 4) **Bill Summary.** This bill replaces a number of existing bid thresholds for MTS, NCTD and SANDAG to an amount equal to or in excess of the SAT and the corresponding micro-purchase threshold. These bid thresholds include contracting for: materials, supplies, and equipment; and, the acquisition of services, including architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services.

For contracts for architectural, landscape architectural, engineering, environmental, land surveying, and construction project management services that equal or exceed the SAT, the respective board must solicit statements of qualifications and proposals in writing. For these contracts that equal or exceed the micro-purchase threshold but are less than the SAT, the respective board must seek a minimum of three quotations, either written or oral, to permit comparison of prices and other terms and allow the board to determine the most highly rated offeror.

This bill is sponsored by MTS, NCTD, and SANDAG.

- 5) **Policy Considerations and Committee Amendments.** The Committee may wish to consider the following:

Public bidding and low-bid awarding requirements are intended as safeguards against public agencies that might spend taxpayer dollars imprudently or use unethical practices when contracting. Higher bid thresholds mean fewer procurements receive these protections. Generally speaking, this Committee has limited bid threshold increases to an inflationary adjustment as a means of retaining these protections while recognizing the need for local agencies to maximize resources with today's dollars.

This bill proposes to raise multiple bid thresholds for MTS, NCTD and SANDAG significantly, as the SAT is presently set at \$250,000. In addition, the bill proposes to tie these thresholds to the SAT and any future increases to it – which is determined by the federal government – indefinitely. The Committee may wish to amend this bill to instead update these thresholds to today’s dollars but keep them consistent across the three agencies, which has also been a policy approved by this Committee in the past, by setting the thresholds at \$150,000 and making conforming changes.

Due to timing constraints, these amendments should be adopted in the Transportation Committee.

- 6) **Previous Legislation.** SB 333 (Eggman), Chapter 217, Statutes of 2021, increased the bid threshold for San Joaquin Regional Transit District’s (RTD) purchase of supplies, equipment and materials, from \$50,000 to \$75,000, and allowed the district to award a contract to the responsible bidder who submits a proposal that provides the best value to the district

AB 2711 (Eggman) of 2020 was similar to SB 333. AB 2711 was held in this Committee.

AB 1089 (Stone), Chapter 107, Statutes of 2019, increased the bid threshold for the purchase of supplies, equipment, and materials by the Santa Cruz Metropolitan Transit District and allowed the use of best value for these contracts, and altered appointments and reimbursements for the district’s board of directors.

AB 2030 (Mullin), Chapter 143, Statutes of 2016, changed specified bidding requirements for the San Francisco Bay Area Rapid Transit District and the San Mateo County Transit District, including bid threshold increases for the for the purchase of supplies, equipment, and materials.

AB 1988 (Chavez) of 2014 would have authorized NCTD to use any procurement method authorized for state or local agencies under state or federal law and made several other changes to the NCTD Act. AB 1988 was held in this Committee.

AB 2522 (Nakanishi) of 2004 would have allowed RTD to purchase supplies, equipment and materials or construct facilities or works in amounts below the level established in federal guidelines without being required to undergo the low-bid procurement process. AB 2522 was held in the Assembly Transportation Committee.

AB 3050 (Committee on Transportation), Chapter 651, Statutes of 2004, increased RTD’s bid threshold for the purchase of supplies, equipment, and materials from \$15,000 to \$50,000.

- 7) **Double-Referral.** This bill is double-referred to the Transportation Committee.
- 8) **Arguments in Support.** SANDAG, co-sponsor of this bill, writes, “In 2018, the US Office of Federal Financial Management issued a Memorandum (M-18-18) noting that federal micro-purchase and simplified acquisition thresholds were updated. However, SANDAG procurement thresholds have not been changed since the passage of SB 1703 in January 2003. Since this time, costs have increased significantly, and aligning with the federal

permissible thresholds will streamline administrative activities, thus reducing costs and expediting project delivery for SANDAG, MTS, and NCTD.

“In conclusion, this bill provides SANDAG, MTS, and NCTD with a more efficient procurement system at a time when substantial amounts of federal aid will flow to the region under several federal COVID-related relief bills and the recently approved federal Infrastructure Investment and Jobs Act (IIJA). For these reasons SANDAG is co-sponsoring AB 1833.”

9) **Arguments in Opposition.** None on file.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

San Diego Association of Governments [CO-SPONSOR]

San Diego Metropolitan Transit System [CO-SPONSOR]

**Opposition**

None on file

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