

Date of Hearing: May 4, 2022

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT

Cecilia Aguiar-Curry, Chair

AB 2271 (Gipson) – As Amended April 18, 2022

SUBJECT: Los Angeles County Metropolitan Transportation Authority: contracting: local businesses.

SUMMARY: Expands the Los Angeles County Metropolitan Transportation Authority's (LA Metro's) ability to facilitate bid preferences to small business enterprises (SBEs) and medium business enterprises (MBEs). Specifically, **this bill:**

- 1) Allows LA Metro to provide a local small business enterprise (LSBE) a preference in construction, the construction component of a design-build team, the procurement of goods, or the delivery of services. The preference to a LSBE shall be 5 percent of the lowest responsible bidder meeting specifications that provides for LSBE participation. Specifies that LA Metro may also offer the preference to a nonlocal business if the bid includes 30 percent participation by a local small business.
- 2) Increases from \$3 million to \$5 million the maximum dollar amount LA Metro may set aside work for competition among certified SBEs.
- 3) Eliminates the 2024 sunset date on the authority for LA Metro to provide bid preferences to SBEs and MBEs.
- 4) Limits eligibility for SBE preferences to SBEs that are headquartered in the County of Los Angeles.
- 5) Deletes a requirement that no more than 250 employees may comprise and MBE.

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 disabled veteran business enterprises (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.
 - 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) Allows, until January 1, 2024, LA Metro to set aside work for competition among MBEs for no more than 20 contracts. Allows LA Metro to 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.
 - 3) 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.
 - 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) Defines "disabled veteran business enterprise" to have the meaning as defined in California's DVBE Program pursuant to the Military and Veterans Code.

FISCAL EFFECT: None.

COMMENTS:

- 1) **Author's Statement.** According to the author, "LA Metro continues to pave the way for smaller businesses to have a shot at prime transportation contracts that had historically been out of reach for them. These business entities remain a critical part of the American fabric but, due to a number of barriers, were willing to engage in public works transportation projects yet often were unable to secure the required bonding, or because they did not have the financial means to meet the demands of financial institutions. These are entities that also employ a large number of California's workers most in need – an overwhelming majority of them being women and people of color. And it is widely known that low-income communities of color have been hit the hardest during the pandemic.

"Local businesses contribute a great deal of tax dollars to local governments, and they provide long-term benefits for a variety of populations. By boosting contracting opportunities for local businesses in LA, this next step effort would continue to promote a stronger, more inclusive marketplace, to best serve our communities and create more economic opportunities for those most in need."

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

The state 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.

- 3) **LA Metro & The Olympics.** LA Metro is a county transportation commission created to fund, plan for, coordinate, build, and operate public transportation systems within Los Angeles County. LA Metro also serves as the regional transportation planning agency for the county and administers the local sales tax levied to fund transportation projects within the county.

The 2028 Summer Olympic and Paralympic Games are scheduled to take place in Los Angeles from July through September, 2028. This will be the third time that the city has hosted the Summer Olympics, making it the first North American city and the third worldwide to host the Games three times. According to an LA Metro blog post in September 2017, shortly after Los Angeles won its bid to host the Olympics, "In terms of local transportation, a lot will change between now and 2028. That is thanks to Measure R and Measure M, the two transportation ballot measures approved by L.A. County voters in 2008 and '16, respectively. Many Olympic events will be clustered in a few areas around our region, with three major 'sports parks' adjacent to rail or bus rapid transit lines in downtown Los Angeles, the Sepulveda Basin in the San Fernando Valley and the Long Beach waterfront. Other venues are also near transit (Santa Monica Beach, the Rose Bowl, the new football stadium in Inglewood, StubHub Center, to name a few) or will be served by shuttle buses from transit and other destinations." The blog post highlighted multiple projects that LA Metro had planned in preparation for the Olympics.

LA Metro also launched the "Twenty-Eight by '28" initiative, which highlights 28 LA Metro projects for potential completion by the 2028 Summer Olympic and Paralympic Games. According to LA Metro, "The 2028 Games are an opportunity to advocate for resources to accelerate these projects, and a milestone to show what can be accomplished by working collaboratively as a region – with benefits to Los Angeles County for generations to come. The Metro Board approved a list of projects, which includes projects already slated for completion by 2028, as well as projects with later delivery dates with potential for acceleration...Not all Measure M investments scheduled for completion by 2028 are included in the Twenty-Eight by '28 list, and the list does not replace commitments made in the Measure M Ordinance."

- 4) **LA Metro's SBE, DVBE, and MBE 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.

AB 1205 (Jones-Sawyer), Chapter 473, Statutes of 2018, authorized LA Metro to facilitate up to 20 contract awards to MBEs where the expected expenditure exceeds \$3,000,000 but is less than \$30,000,000 dollars. The authority requires LA Metro to solicit price quotations from at least three SBEs for each contract, and requires LA Metro to report in 2020 and 2023 on MBE contracts issued under the authority created in AB 1205. The bill defined MBE as an enterprise with no more than 250 employees and no more than \$250 million in gross annual receipts over three years.

- 5) **Bill Summary.** This bill expands and extends LA Metro's authority to award bid preferences to SBEs and MBEs as follows:
- a) Expands LA Metro's ability to provide contract preferences to SBEs. Specifically the bill creates an additional preference that can be provided to LSBEs and increases the total dollar amount for contracts that can be set aside for SBEs and LSBEs from \$3 million to \$5 million.
 - b) Eliminates the employee threshold limiting MBEs to enterprises that have 250 employees or less.
 - c) Extends LA Metro's authority to provide contract preferences to SBEs, LSBEs and MBEs indefinitely.

This bill is sponsored by LA Metro.

- 6) **Policy Considerations.** The Committee may wish to consider the following.
- a) **LSBE Preferences.** This bill seeks to create an additional preference category for LSBEs. As drafted LSBEs could qualify for a local preference of five percent in addition to the SBE preference of five percent. However, the bill also amends the definition of SBE to limit the definition of SBE to enterprises that are headquartered in the County of Los Angeles. In practice, this renders the additional local preference redundant as all SBEs would be "local" under the new definition.
 - b) **MBE Employee Threshold.** LA Metro's authority to create a preference for MBEs commenced in 2019 following the passage of AB 1205. To date LA Metro only awarded one contract to an MBE under this authority. This may be attributable to the difficulty of securing at least three qualifying bids from MBEs that meet the codified employee threshold of 250. This bill proposes to eliminate the employee threshold. The Committee may wish to collect more information from LA Metro on the average employee number

for contracts between \$5 million and \$30 million to determine an appropriate employee number to use to define MBEs. Pending additional information, the author may wish to adjust the employee number used to define MBEs in consultation with Committee staff moving forward.

- c) **Bid Thresholds.** This bill seeks to increase the maximum bid set aside for SBE contracts eligible for preference from \$3 million to \$5 million. This would align LA Metro’s statutorily authorized SBE set aside with LA Metro’s federally approved *Small Business Prime (Set–Aside) Policy*. Aligning the SBE program threshold with the federally approved program is sound, however this creates an overlap with the MBE minimum bid threshold of \$3 million. The Committee may wish to consider ensuring there is no overlap between the MBE and SBE programs.
 - d) **Sunset & Reporting.** This bill proposes to eliminate the sunset date for LA Metro’s authority to provide contract preferences to SBEs, MBEs and LSBEs. LA Metro is interested in ensuring that a portion of the significant contract dollars the agency anticipates awarding in advance of the 2028 Olympics go to local small and medium sized businesses. The Committee may wish to consider keeping the sunset in statute but extending the sunset to January 1, 2028.
- 7) **Committee Amendments.** To address the policy considerations above, the Committee may wish to amend the bill as follows:
- a) **LSBE Definition.** Delete the amendments to the existing definition of SBE, and create a new definition of LSBE to the bill:

“Local small business enterprise” 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.”
 - b) **MBE Minimum Bid Threshold.** Increase the minimum bid threshold for MBEs from \$3 million to \$5 million to eliminate overlap with the SBE threshold, which the bill is increasing to \$5 million.
 - c) **MBE Employees.** Revert to the current MBE employee threshold of 250.
 - d) **Report.** Require LA Metro to report on the implementation of their bid preference programs in 2026 and to include information on the number of employees at each of the MBEs awarded contracts under the bid preference authority.
 - e) **Sunset Extension.** Extend the sunset to January 1, 2028.
- 8) **Arguments in Support.** LA Metro writes in support, “As LA County emerges from the COVID-19 pandemic, supporting local small businesses to ensure a clear path to economic recovery is essential. Metro is investing significant local resources in our transportation system, and we want to ensure local small businesses benefit. This program would complement already existing preference programs such as the Disadvantaged Business Enterprise (DBE), Small Business Enterprise/Disabled Veterans Business Enterprise

(SBE/DVBE) programs, the Medium-Size Business Enterprise (MSZ) and Small Business Prime (Set-Aside) programs.”

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

10) **Related Legislation.** AB 2039 (L. Rivas) Authorizes the Los Angeles County Metropolitan Transportation Authority (LA Metro) to enter into job order contracts (JOCs). AB 2039 is pending in this Committee.

11) **Previous Legislation.** AB 1205 (Jones-Sawyer), Chapter 473, Statutes of 2018, authorized LA Metro to facilitate contract awards to up to 20 MBEs on contracts where the expected expenditure exceeds \$3,000,000 but is less than \$30,000,000 dollars.

AB 2690 (Ridley-Thomas), Chapter 204, Statutes of 2016, significantly strengthened LA Metro's authority to facilitate contracting with SBEs and DVBEs.

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.

AB 1341 (Price), Chapter 494, Statutes of 2010, authorized LA Metro to facilitate contract awards to small businesses on contracts over \$100,000.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Metropolitan Transportation Authority (LA Metro) [SPONSOR]
Asian American Architects/Engineers Association
Los Angeles Latino Chamber of Commerce
Redwood Resources
Transportation Business Advisory Council (TBAC)

Opposition

None on file.

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