

Date of Hearing: April 6, 2016

ASSEMBLY COMMITTEE ON LOCAL GOVERNMENT
Susan Talamantes Eggman, Chair
AB 2690 (Ridley-Thomas) – As Introduced February 19, 2016

SUBJECT: Los Angeles County Metropolitan Transportation Authority: contracting.

SUMMARY: Allows the Los Angeles County Metropolitan Transportation Authority (Metro) to facilitate contract awards with disabled veteran business enterprises, and makes a number of changes to Metro's existing authority to facilitate contract awards with small business enterprises. Specifically, **this bill:**

- 1) Allows Metro to facilitate contract awards with disabled veteran business enterprises (DVBEs), except for contracts for professional services involving private architectural, landscape architectural, engineering, environmental, land surveying, or construction management, as specified.
- 2) Deletes a provision that allows Metro to require bidders, prior to the time bids are opened, to make a good faith effort to comply with small business enterprise (SBE) goals and requirements established by Metro.
- 3) Allows Metro, in facilitating contract awards with SBEs and DVBEs, to do any of the following:
 - a) Require bidders, prior to the time bids are opened, to comply with the SBE and DVBE goals and requirements established by Metro on contracts financed with nonfederal funds;
 - b) In awarding contracts to the lowest responsible bidder, award the contract to the lowest responsible bidder meeting the SBE and DVBE goals;
 - c) Set aside work for competition among certified SBEs and award a contract to the lowest responsible bidder whenever the expected expenditure required exceeds \$3,000, but is less than a threshold amount established by Metro, as long as price quotations are obtained by Metro from three or more certified SBEs; and,
 - d) Set aside work for competition among certified SBEs and award a contract to the lowest responsible bidder whenever the expected expenditure required exceeds Metro's threshold amount in c), above, but is less than \$5 million, as long as price quotations are obtained by Metro from three or more certified SBEs.
- 4) Requires a SBE recommended for a contract award through use of a set aside to be performing a commercially useful function. An SBE shall be presumed to be performing a commercially useful function if it performs and exercises responsibility of at least 30% of the total cost of the contract work with its own workforce.
- 5) Deletes a number of requirements that apply to bidders pursuant to Metro's existing authority to facilitate contract awards to SBEs.

- 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 Metro's authority to facilitate contract awards with SBEs and DVBEs to mean a numerically expressed objective that bidders are required to achieve.

EXISTING LAW:

- 1) Allows 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 to small businesses:
 - 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 shall be 5% of the lowest responsible bidder meeting specifications that provide for small business participation;
 - b) Establish a subcontracting participation goal for small businesses on contracts financed with nonfederal funds and grant a preference of 5% to the lowest responsible bidders who meet the goal; and,
 - c) Require bidders to make a good faith effort, in accordance with the criteria established in 2), below, prior to the time bids are opened, to comply with the goals and requirements established by Metro relating to participation in the contract by small businesses.
- 2) Provides that the following shall apply to bidders under the above provisions:
 - a) The bidder attended any presolicitation or prebid meetings that were scheduled by Metro to inform all bidders of the SBE program requirements for the project for which the contract will be awarded. Metro may waive this requirement if it determines that the bidder is informed as to those program requirements;
 - b) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by SBEs to provide an opportunity for participation by those enterprises;
 - c) The bidder advertised, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications or trade-oriented publications, trade journals, or other media, specified by Metro for SBEs that are interested in participation in the project. This only applies if Metro gave public notice of the project not less than 15 calendar days prior to the date the bids are opened;
 - d) The bidder provided written notice of his or her interest in bidding on the contract to the number of SBEs required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. Metro shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or source of lists of enterprises which are certified by Metro as SBEs;

- e) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project;
 - f) The bidder provided interested SBEs with information about the plans, specifications, and requirements for the selected subcontracting or material supply work;
 - g) The bidder requested assistance from small business community organizations; small business contractor groups; local, state, or small business assistance offices; or, other organizations that provide assistance in the recruitment and placement of SBEs, if any are available;
 - h) The bidder negotiated in good faith with the SBEs, and did not unjustifiably reject as unsatisfactory bids prepared by any SBEs, as determined by Metro;
 - i) Where applicable, the bidder advised and made efforts to assist interested SBEs in obtaining bonds, lines of credit, or insurance required by Metro or contractor; and,
 - j) The bidder's efforts to obtain SBE participation could reasonably be expected by Metro to produce a level of participation sufficient to meet the goals and requirements of Metro.
- 3) 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.
- 4) Allows Metro to establish limitations regarding the average annual gross receipts of a small business over the previous three fiscal years and establish limitations regarding the personal net worth of the owner of the small business, exclusive of the value of the owner's personal residence.
- 5) Allows, pursuant to the Small Business and 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 contract award is greater than \$5,000 and less than \$250,000; and,
 - b) Quotes are obtained from two or more SBs or from two or more DVBEs.
- 6) Allows 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 and less than \$250,000, as specified; and,
 - b) Quotes are obtained from two or more SBs or from two or more DVBEs.

FISCAL EFFECT: None

COMMENTS:

- 1) **Bill Summary.** This bill makes a number of changes to Metro's contracting authority. First, it allows Metro to facilitate contract awards with DVBEs. It eliminates Metro's authority to require bidders to make a good faith effort to comply with SBE goals, and instead, allows Metro to do the following in facilitating contract awards with SBEs and DVBEs:
 - a) Require bidders, prior to the time bids are opened, to comply with the SBE and DVBE goals and requirements established by Metro on contracts financed with nonfederal funds;
 - b) In awarding contracts to the lowest responsible bidder, award the contract to the lowest responsible bidder meeting the SBE and DVBE goals;
 - c) Set aside work for competition among certified SBEs and award a contract to the lowest responsible bidder whenever the expected expenditure required exceeds \$3,000, but is less than a threshold amount established by Metro, as long as price quotations are obtained by Metro from three or more certified SBEs; and,
 - d) Set aside work for competition among certified SBEs and award a contract to the lowest responsible bidder whenever the expected expenditure required exceeds Metro's threshold amount in c), above, but is less than \$5 million, as long as price quotations are obtained by Metro from three or more certified SBEs.

The bill requires an SBE recommended for a contract award through use of a set aside to be performing a commercially useful function, which the bill defines an SBE that performs and exercises responsibility for at least 30% of the total cost of the contract work with its own workforce. The bill also defines "goal," as that term is used for purposes of Metro's SBE and DVBE contracting, to mean a numerically expressed objective that bidders must achieve.

This bill is sponsored by Metro.

- 2) **Author's Statement.** According to the author, "LA Metro is the largest transportation agency in the state, issuing approximately \$2 to \$5 billion in contracts annually.

"Under existing law, contractors voluntarily opt-in to the current Small Business Enterprise (SBE) preference program. While the current SBE preference program has aided Metro in increasing SBE participation, requiring bidders to meet a specific SBE subcontracting goal on contracts would substantially increase SBE participation rates. As for Disadvantaged Veteran Business Enterprise (DBVE) participation, existing law does not allow LA Metro to use goals or preferences on those contracts.

"Small businesses are the engine of economic growth and job creation in this state. Allowing LA Metro to use a range of tools to increase opportunities for small businesses will create multipliers in the local economy and bring opportunities to underserved communities."

- 3) **Background.** AB 1341 (Price), Chapter 494, Statutes of 2010, authorized 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 Metro's authority to

facilitate contract awards to small businesses. In facilitating SBE contracts, Metro may provide a bid preference of 5% to the lowest responsible bidder. 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. Metro currently has no authorization to facilitate contract awards to DVBEs, or to use small business set-asides.

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.

This bill significantly strengthens Metro's authority to facilitate contracting with SBEs and DVBEs, in addition to expanding the existing 5% bid preference for SBEs to DVBEs. Bidders will now be **required** to meet (rather than make a good faith effort to meet) SBE and DVBE goals, and these goals will now carry a numerically expressed objective that bidders must achieve. In awarding contracts to the lowest responsible bidder, Metro will now be allowed to award the contract to the lowest responsible bidder who meets the SBE and DVBE goals.

Metro will also be able to set aside contracts for competition by certified SBEs, as long as 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) **Suggested Amendment.** The Committee may wish to consider the following amendment:

This bill allows small business set-asides under two categories:

- a) When the expected expenditure exceeds \$3,000, but is less than a threshold amount established by Metro; and,
- b) When the expected expenditure exceeds a threshold amount established by Metro, but is less than \$5 million.

Under the Act, which applies to state agencies, the thresholds for SBE set-asides are between \$5,000 and \$250,000. While the Act's provisions require only two price quotes, and this bill would require three, the Committee may wish to amend this bill to allow small business set-asides when the expected expenditure exceeds \$5,000 but is less than \$250,000.

5) **Previous Legislation.** AB 2440 (Lowenthal), Chapter 703, Statutes of 2012, eliminated the \$100,000 limitation on Metro's authority to facilitate contract awards to small businesses.

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

- 6) **Arguments in Support.** The Los Angeles County Metropolitan Transportation Authority, sponsor of this bill, states, "Small business set-asides allow for small business to bid as primes, fostering opportunities to grow and continue to build capacity. This bill will allow Metro to utilize a range of tools to further promote and facilitate increased participation of SBEs and DVBES in public contracting with Metro."
- 7) **Arguments in Opposition.** None on file.
- 8) **Double-Referral.** This bill is double-referred to the Transportation Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Metropolitan Transportation Authority [SPONSOR]

Opposition

None on file

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