

Date of Hearing: April 26, 2021

ASSEMBLY COMMITTEE ON TRANSPORTATION
Laura Friedman, Chair
AB 811 (Luz Rivas) – As Amended April 6, 2021

SUBJECT: Los Angeles County Metropolitan Transportation Authority: contracting

SUMMARY: Repeals a requirement for Los Angeles County Metropolitan Transportation Authority (LA Metro) to adopt a finding, with a two-thirds vote, that awarding specified contracts will achieve certain private sector efficiencies in the integration of design, project work, and components. Specifically, **this bill:**

- 1) Removes this finding requirement for contracts that combine all or some of the planning, design, permitting, development, joint development, construction, construction management, acquisition, leasing, installation, and warranty of all or components of:
 - a) Transit systems, including, without limitation, passenger loading or intermodal station facilities.
 - b) Facilities on real property owned or to be owned by the authority.
- 2) Retains the finding requirement for these specified contracts that also include operation and maintenance elements, if the inclusion of these elements is:
 - a) Necessary to assess vendor representations and warranties, performance guarantees, or life-cycle efficiencies.
 - b) Does not conflict with collective bargaining agreements to which LA Metro is a party.

EXISTING LAW:

- 1) Allows LA Metro to enter into contracts with private entities, the scope of which may combine within a single contract all or some of the planning, design, permitting, development, joint development, construction, construction management, acquisition, leasing, installation, and warranty of all or components of (1) transit systems, including, without limitation, passenger loading or intermodal station facilities, and (2) facilities on real property owned or to be owned by the authority.
- 2) Provides that LA Metro may award these contracts after a finding by a two-thirds vote of its members that awarding the contract will achieve certain private sector efficiencies in the integration of design, project work, and components.
- 3) Allows these contracts to include operation and maintenance elements, if the inclusion of those elements (1) is necessary, in the reasonable judgment of the authority, to assess vendor representations and warranties, performance guarantees, or life-cycle efficiencies, and (2) does not conflict with collective bargaining agreements to which the authority is a party.

- 4) Provides that any construction, alteration, demolition, repairs, or other works of improvement performed under these contracts for LA Metro shall be considered a public works project and enforced by the Department of Industrial Relations.
- 5) Requires these contracts to be let to the lowest responsible bidder, as specified, or to a contractor chosen by a competitive bidding process that employs objective selection criteria that may include, but are not limited to, the proposed design approach, features, functions, life-cycle costs, and other criteria deemed appropriate by the authority, in addition to price.
- 6) Provides specified requirements for these contracts regarding noticing bids, bidding procedures, bid securities and subcontracting.

FISCAL EFFECT: Unknown

COMMENTS: 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.

Design-build refers to a procurement process in which both the design and construction of a project are procured from a single entity. Design-build stands in contrast to the traditional design-bid-build contracting method whereby work on a project is divided into two separate phases: design and construction. Under design-bid-build, the government agency is responsible for the design of the project, either by designing it itself or by contracting with a private entity to do so. When designs are completed, the agency solicits bids from the construction industry and hires the responsible low bidder to build the project. Design-build combines these two phases into a single, comprehensive contract.

Before awarding a contract, LA Metro's governing board must adopt, by a two-thirds vote, a finding that awarding the contract will achieve certain private sector efficiencies in the integration of design, project work, and components. LA Metro's design-build statute was created in the 1990's and includes a two-step approval process for design-build contract awards. When implemented, design-build was not as common a delivery method for capital construction projects as it is today. Current statute contains a requirement that the LA Metro board first approve, by a two-thirds vote, a finding that the design-build method of project delivery is efficient. Only then can the board approve the subsequent contract award in a separate action each time they wish to utilize design-build for a capital project. The procurement process cannot begin until the finding has been approved.

Among other powers, LA Metro use the design-build method of procurement to develop transit systems and facilities on property owned by the authority. These contracts may include operation and maintenance within the contract and may be awarded to either the lowest bidder or the bidder that offers the best value based on objective selection criteria, including proposed design approach and live-cycle costs of the project. State law prescribes the manner in which LA Metro must solicit bids, deems the projects to be public works, and establishes other requirements for these contracts entered into by LA Metro, including making specific findings before awarding a contract.

Due to the success of the design-build method of project delivery, subsequent design-build laws have been passed that do not require the initial approval of a finding – and this bill aligns LA Metro’s authorizing statute with the state’s other design-build statutes. No other transportation agency in California has to take this extra step.

The delays caused by this requirement make it difficult for LA Metro to meet the needs of the voters who approved Measure M, and according to LA Metro risks a timely completion of infrastructure projects for the 2028 Olympic and Paralympic Games.

As our state looks to rebuild its economy following the COVID-19 pandemic, it is critical that agencies, like LA Metro, are not overstrained by regulatory burdens that delay the construction of much-needed infrastructure projects and endanger critical construction jobs for the people of Los Angeles County.

This bill maintains LA Metro board approval of all design-build contracts through a public, transparent process, and maintains a two-thirds vote for contracts that include maintenance and operations. These assurances maintain accountability and prevent labor outsourcing.

2028 Summer Olympic and Paralympic Games: 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 planned in preparation for the Olympics, including:

- a) The 8.5-mile Crenshaw/LAX Line between the Expo Line and Green Line, which was scheduled to open in fall 2019. An additional station at Aviation Boulevard and 96th Street is scheduled to open in the early 2020s.
- b) The 3.9-mile first section of the Purple Line Extension from Wilshire/Western to Wilshire/La Cienega with stations at Wilshire/La Brea and Wilshire/Fairfax. A second section to downtown Beverly Hills and Century City and a third section to Westwood are scheduled to be completed in the mid-2020s.
- c) The 1.9-mile Regional Connector that will connect the Blue, Expo and Gold Lines and is scheduled to open in late 2021. When done, Metro will run two light rail lines: one between Azusa and Long Beach and the other between East Los Angeles and Santa Monica. The two lines will share five stations in DTLA.

- d) An extension of the Gold Line from Azusa to Claremont with other stations in Glendora, San Dimas, La Verne and Pomona. With funding from San Bernardino County, the line could be extended to Montclair.
- e) A bus rapid transit project on Vermont Avenue that will be adjacent to the L.A. Memorial Coliseum and Exposition Park.
- f) A high-capacity transit line (either bus rapid transit, tram or light rail) that will run on Van Nuys Boulevard and San Fernando Road between the Orange Line and Sylmar/San Fernando Metrolink station.
- g) The first phase of an Artesia-to-Union Station light rail line.
- h) A bus rapid transit line between North Hollywood and Pasadena with connections to Burbank, Glendale and L.A.
- i) Upgrades to the Orange Line to improve bus speeds and travel times.

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."

According to the author, "As planning for the 2028 Olympic and Paralympic Games progresses, the Los Angeles County Metropolitan Transportation Authority (LA Metro) is tasked with delivering critical transportation infrastructure projects. AB 811 streamlines LA Metro's project delivery by removing the two-third vote requirement when design-build is used. This measure will also bring LA Metro's enabling statutes in accord with all other transit agencies in the state—none of which have to abide by this two-third vote requirement."

In support, LA Metro writes, "This proposal brings LA Metro's enabling statute into accord with other transit agencies by streamlining the approval process for the utilization of design-build by removing the superfluous two-thirds vote requirement."

Previous Legislation: AB 2514 (L. Rivas) of 2020 was substantially similar to this bill. This bill was held in Assembly Local Government Committee.

AB 1594 (Bloom) of 2018 would have added passenger rapid transit, subways, and heavy rail to the types of fee-producing infrastructure for which a local government can enter into a public-private partnership (P3). The bill also would have repealed the requirement for LA Metro, prior to awarding a design-build or P3 contract, to adopt a finding with a two-thirds vote that awarding the contract will achieve efficiencies in the integration of design, project work, and components. This bill was held on the Senate Floor.

REGISTERED SUPPORT / OPPOSITION:

Support

Los Angeles County Metropolitan Transportation Authority (Sponsor)

Opposition

None on file.

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