

Date of Hearing: April 18, 2016

ASSEMBLY COMMITTEE ON TRANSPORTATION  
Jim Frazier, Chair  
AB 2690 (Ridley-Thomas) – As Amended April 12, 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 (DVBEs), and makes a number of changes to Metro's existing authority to facilitate contract awards with small business enterprises (SBEs). Specifically, **this bill:**

- 1) Allows Metro to facilitate contract awards with DVBEs, except for contracts for professional services involving private architectural, landscape architectural, engineering, environmental, land surveying, or construction management, as specified.
- 2) Replaces provisions allowing Metro to require bidders to make a good faith effort to comply with SBE goals and requirements prior to bid opening with provisions that require bidders to comply with the SBE and DVBE goals and requirements prior to bid opening.
- 3) Allows Metro to award contracts to the lowest responsible bidder meeting the SBE and DVBE goals.
- 4) Allows Metro to set aside work for competition among certified SBEs and to 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 Metro from three or more certified SBEs; requires Metro to report to the Legislature regarding contracts awarded under this authority.
- 5) Requires an SBE recommended for a contract award through the 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.
- 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.
- 8) Deletes a number of provisions related to how a bidder would demonstrate good faith efforts to meet SBE goals.

**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 non-federal 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) Sets forth parameters by which bidders can demonstrate good faith efforts to achieve SBE goals.
- 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, 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 SBEs 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 SBEs or from two or more DVBEs.

**FISCAL EFFECT:** Unknown, this bill is keyed non-fiscal by the Legislative Counsel.

**COMMENTS:** AB 2690 is intended to allow Metro to utilize a range of tools to further promote and facilitate increased participation of SBEs and DVBEs in its contracting. The agency lets between \$2 billion and \$5 billion in contracts annually. The small business set-asides provided for in this bill will allow for small business to bid as prime contractors and foster opportunities to grow and continue to build capacity.

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."

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.

*Double referral.* This bill passed out of the Assembly Local Government Committee on April 6, 2016, on a vote of 9–0.

*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.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Los Angeles County Metropolitan Transportation Authority (Sponsor)

**Opposition**

None on file

**Analysis Prepared by:** Janet Dawson / TRANS. / (916) 319-2093