

## Senate Bill No. 1687

### CHAPTER 814

An act to amend Section 20221 of the Public Contract Code, and to amend Sections 130232 and 130243 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 30, 2006. Filed with Secretary of State September 30, 2006.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 1687, Murray. Los Angeles County Metropolitan Transportation Authority: San Francisco Bay Area Rapid Transit District.

Existing law establishes various regional transportation authorities, including the Los Angeles County Metropolitan Transportation Authority (MTA) and the San Francisco Bay Area Rapid Transit District (BART). Existing law provides that, with respect to MTA and BART, the purchase of all supplies, equipment, and materials, when the expenditure required exceeds \$40,000, shall be by contract let to the lowest responsible bidder.

This bill instead would require those purchases, when the expenditure required exceeds \$100,000, adjusted annually as provided under federal law, to be by contract let to the lowest responsible bidder or to the responsible bidder who submits a proposal that provides the best value, as defined. The bill would make related, conforming changes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 20221 of the Public Contract Code is amended to read:

20221. (a) The purchase of all supplies, equipment, and materials when the expenditure required exceeds one hundred thousand dollars (\$100,000), adjusted annually consistent with Chapter 1 of Title 48 of the Code of Federal Regulations, shall be by contract let to the lowest responsible bidder or, in the district's discretion, to the responsible bidder who submitted a proposal that provides the best value to the district on the basis of the factors identified in the solicitation. "Best value" means the overall combination of quality, price, and other elements of a proposal that, when considered together, provide the greatest overall benefit in response to requirements described in the solicitation documents. The construction of facilities and works when the expenditure required exceeds ten thousand dollars (\$10,000) shall be by contract let to the lowest responsible bidder. Notice requesting bids shall be published at least once in a newspaper of general circulation. This publication shall be made at

least 10 days before the bids are received. The board may reject any and all bids and readvertise in its discretion.

(b) Whenever the expected procurement required exceeds two thousand five hundred dollars (\$2,500), adjusted annually consistent with Chapter 1 of Title 48 of the Code of Federal Regulations, and, in the case of the construction of facilities and works does not exceed ten thousand dollars (\$10,000) or in the case of the purchase of supplies, equipment, or materials does not exceed one hundred thousand dollars (\$100,000), adjusted annually consistent with Chapter 1 of Title 48 of the Code of Federal Regulations, the district shall obtain a minimum of three quotations, either written or oral, that permit prices and terms to be compared.

(c) Where the expenditure required by the bid price is less than one hundred thousand dollars (\$100,000), the general manager may act for the board. When acting pursuant to this subdivision, the general manager shall, in each instance, promptly notify the board of the action taken.

SEC. 2. Section 130232 of the Public Utilities Code is amended to read:

130232. (a) Except as provided in subdivision (f), purchase of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure required exceeds twenty-five thousand dollars (\$25,000), shall be by contract let to the lowest responsible bidder. Notice requesting bids shall be published at least once in a newspaper of general circulation. The publication shall be made at least 10 days before the date for the receipt of the bids. The commission, at its discretion, may reject any and all bids and readvertise.

(b) Except as provided for in subdivision (f), whenever the expected expenditure required exceeds one thousand dollars (\$1,000), but not twenty-five thousand dollars (\$25,000), the commission shall obtain a minimum of three quotations, either written or oral, which permit prices and terms to be compared.

(c) Where the expenditure required by the bid price is less than fifty thousand dollars (\$50,000), the executive director may act for the commission.

(d) All bids for construction work submitted pursuant to this section shall be presented under sealed cover and shall be accompanied by one of the following forms of bidder's security:

- (1) Cash.
- (2) A cashier's check made payable to the commission.
- (3) A certified check made payable to the commission.
- (4) A bidder's bond executed by an admitted surety insurer, made payable to the commission.

(e) Upon an award to the lowest bidder, the security of an unsuccessful bidder shall be returned in a reasonable period of time, but in no event shall that security be held by the commission beyond 60 days from the date that the award was made.

(f) The following provisions apply only to the Los Angeles County Metropolitan Transportation Authority:

(1) The contract shall be let to the lowest responsible bidder or, in the commission's discretion, to the responsible bidder who submitted a proposal that provides the best value to the commission on the basis of the factors identified in the solicitation when the purchase price of all supplies, equipment, and materials exceeds one hundred thousand dollars (\$100,000), adjusted annually consistent with Chapter 1 of Title 48 of the Code of Federal Regulations. "Best value" means the overall combination of quality, price, and other elements of a proposal that, when considered together, provide the greatest overall benefit in response to requirements described in the solicitation documents. The contract shall be let to the lowest responsible bidder when the purchase price of the construction of all facilities exceeds twenty-five thousand dollars (\$25,000).

(2) The commission shall obtain a minimum of three quotations, whether written or oral that permit prices and terms to be compared whenever the expected expenditure required exceeds two thousand five hundred dollars (\$2,500), adjusted annually consistent with Chapter 1 of Title 48 of the Code of Federal Regulations, but not one hundred thousand dollars (\$100,000), adjusted annually consistent with Chapter 1 of Title 48 of the Code of Federal Regulations.

SEC. 3. Section 130243 of the Public Utilities Code is amended to read:

130243. The Los Angeles County Metropolitan Transportation Authority shall adopt a change order procedure for contracts awarded by the authority that includes each of the following requirements:

(a) When a change order is proposed, the contract administrator of the authority shall be notified and shall determine whether a change order is required. After consulting with the general counsel of the authority and appropriate technical advisers, the contract administrator shall either approve or disapprove the proposed contract change order.

(b) The general counsel of the authority shall be consulted on the proposed change order at the earliest possible time to consider and render advice on the legal implications of the proposed change. The contract administrator shall not approve a proposed change order unless the general counsel recommends changing the terms of the contract.

(c) The contract administrator shall require the contractor to submit certified cost and pricing data for the proposed change, and shall require an internal fiscal audit of any proposed change order when cost and pricing data would be required under federal acquisition regulations contained in Subpart 15.4 of Part 15 of Subchapter C of Chapter 1 of Title 48 of the Code of Federal Regulations.

(d) The opinions of informed individuals working on the contract who oppose the adoption of a proposed change order shall be documented and

be taken into consideration by the authority's change control board when determining whether a contract change is warranted.