

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2755**

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**Introduced by Assembly Member Bonnie Lowenthal**

February 19, 2010

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An act to amend Sections 130051.9, 130051.11, 130232, and 130242 of, to amend and renumber Section 130051.21 of, and to repeal Section 130243 of, the Public Utilities Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2755, as amended, Bonnie Lowenthal. Los Angeles County Metropolitan Transportation Authority: contracting.

The County Transportation Commissions Act creates county transportation commissions or authorities in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties, with specified powers and duties. Existing law, with respect to those agencies, generally requires purchase of all supplies, equipment, and materials, and the construction of all facilities and works, when the expenditure exceeds \$25,000, to be by contract let to the lowest responsible bidder. Existing law contains various alternative provisions applicable solely to the Los Angeles County Metropolitan Transportation Authority.

This bill would enact additional provisions applicable to the Los Angeles County Metropolitan Transportation Authority. It would require a contract to be let to the lowest responsible bidder when the purchase price of the ~~contraction~~ *construction* of all ~~facility~~ *facilities* exceeds \$100,000, rather than \$25,000. The bill would authorize the authority to award individual contracts, not exceeding \$8,000,000 per year, providing for the issuance of job orders for construction work with compensation for the work based on unit prices, and would define "job

order” and “unit price” for these purposes. The bill would authorize a contractor of the authority to enter into subcontracts with subcontractors that were not listed in the bid for the job order contract, as specified.

Existing law requires the chief executive officer of the authority to approve and award all contracts for construction, which approval shall be based on the lowest responsible and responsive bid submitted.

This bill would authorize the chief executive officer to delegate this authority as necessary for the administrative efficiency of the authority.

Existing law authorizes the authority to enter into design-build contracts with private entities under which a single contract incorporates some or all of the planning, design, permitting, development, joint development, construction, construction management, acquisition, leasing, installation, and warranty of all or components of transit systems and facilities on real property owned or to be owned by the authority, subject to certain requirements.

This bill would make various modifications to the requirements for design-build contracts. The bill would authorize the authority to delegate the preparation of supporting documents and findings, and award of contracts, under these provisions to an organizational unit of the authority.

Existing law requires the inspector general of the authority to prepare a prequalification questionnaire to be completed by each construction company, engineering firm, consultant, legal firm, product vendor, or other business entity seeking to contract with the authority.

This bill would instead require the questionnaire to be prepared by the authority with respect to business entities seeking to perform a public works project in excess of \$5,000,000, and would only require the inspector general to review the questionnaire to ensure it solicits specified information. The bill would authorize the authority to prequalify prospective contractors and limit consideration of bids or proposals to prequalified contractors.

Existing law requires the authority to adopt a specified change order procedure for contracts awarded by the authority.

This bill would repeal these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

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

1 SECTION 1. Section 130051.9 of the Public Utilities Code is  
2 amended to read:

3 130051.9. (a) The Los Angeles County Metropolitan  
4 Transportation Authority shall appoint a full-time chief executive  
5 officer who shall act for the authority under its direction and  
6 perform those duties delegated by the authority.

7 (b) The chief executive officer shall be appointed to a term of  
8 four years and shall be removed from office only upon the  
9 occurrence of one or both of the following:

10 (1) A two-thirds majority of the members of the authority votes  
11 for removal.

12 (2) The chief executive officer violates a federal or state law,  
13 regulation, local ordinance, or policy or practice of the authority,  
14 relative to ethical practices, including, but not limited to, the  
15 acceptance of gifts or contributions.

16 (c) The chief executive officer shall approve and award all  
17 contracts for construction, and that approval shall be based upon  
18 the lowest responsible and responsive bid submitted. The chief  
19 executive officer may delegate this authority as necessary for the  
20 administrative efficiency of the authority.

21 (d) The Los Angeles County Metropolitan Transportation  
22 Authority shall appoint a general counsel and board secretary.

23 SEC. 2. Section 130051.11 of the Public Utilities Code is  
24 amended to read:

25 130051.11. (a) The Los Angeles County Metropolitan  
26 Transportation Authority may determine its organizational  
27 structure, which may include, but is not limited to, the  
28 establishment of departments, divisions, subsidiary units, or similar  
29 entities. Any department, division, subsidiary unit, or similar entity  
30 established by the authority shall be referred to in this chapter as  
31 an “organizational unit.” The authority shall, at a minimum,  
32 establish the following organizational units:

33 (1) A transit construction organizational unit to assume the  
34 construction responsibilities for all exclusive public mass transit  
35 guideway construction projects in Los Angeles County.

36 (2) An operating organizational unit with the following  
37 responsibilities:

1 (A) The operating responsibilities of the former Southern  
2 California Rapid Transit District on all exclusive public mass  
3 transit guideway projects in the County of Los Angeles.

4 (B) The operation of bus routes operated by the former Southern  
5 California Rapid Transit District, and all the duties, obligations,  
6 and liabilities of the district relating to those bus routes.

7 (3) A transportation planning and programming organizational  
8 unit with all planning responsibilities previously performed by the  
9 former Southern California Rapid Transit District and the former  
10 Los Angeles County Transportation Commission.

11 (b) Nothing in this section shall be construed to require specific  
12 bus routes to be operated. The authority or the operating  
13 organizational unit may make any adjustment with respect to bus  
14 routes, bus services, or both, which is within the power of the  
15 former Los Angeles County Transportation Commission, or the  
16 former Southern California Rapid Transit District.

17 (c) Any obligations of the former Southern California Rapid  
18 Transit District arising out of a collective bargaining agreement  
19 entered into by the district shall be the exclusive obligations of the  
20 Los Angeles County Metropolitan Transportation Authority. It is  
21 the intent of the Legislature that the rights or obligations under  
22 any collective bargaining agreement in existence on January 1,  
23 1993, not be enlarged or diminished by this section or any other  
24 provision of the act which added this section.

25 (d) No collective bargaining agreement entered into by the  
26 former Southern California Rapid Transit District on or after  
27 January 1, 1993, shall be effective unless approved by the Los  
28 Angeles County Metropolitan Transportation Authority. The  
29 authority's approval of an agreement shall cause the agreement to  
30 be binding upon the authority.

31 (e) Any reference to the former Southern California Rapid  
32 Transit District in Article 10 (commencing with Section 30750)  
33 of Chapter 5 of Part 3 of Division 10 is deemed to refer to the Los  
34 Angeles County Metropolitan Transportation Authority.

35 (f) The Los Angeles County Metropolitan Transportation  
36 Authority may administratively delegate to an organizational unit  
37 or to its chief executive officer any powers and duties it deems  
38 appropriate. Powers and duties that may be delegated to an  
39 organizational unit include, but are not limited to, the following:

40 (1) The power of eminent domain.

1 (2) Approval of contracts, except the final approval of labor  
2 contracts.

3 (3) Hearing and resolving bid protests.

4 (4) Preparation of supporting documents and findings, and  
5 approval of contracts, under Sections 130233, 130234, 130236,  
6 130237, and 130242 within guidelines adopted by the board of  
7 directors.

8 (g) The Los Angeles County Metropolitan Transportation  
9 Authority shall establish a citizens' advisory council pursuant to  
10 subdivision (d) of Section 130105.

11 SEC. 3. Section 130051.21 of the Public Utilities Code, as  
12 added by Chapter 10 of the Statutes of 1996, is amended and  
13 renumbered to read:

14 130051.22. (a) The Los Angeles County Metropolitan  
15 Transportation Authority shall prepare a prequalification  
16 questionnaire to be completed by each construction company,  
17 engineering firm, consultant, legal firm, product vendor, and any  
18 other business entity seeking to contract with the authority to  
19 perform a public works project in excess of five million dollars  
20 (\$5,000,000). The authority shall require its inspector general to  
21 review the questionnaire to ensure it solicits, at a minimum,  
22 information on all of the following subjects regarding the firm:

23 (1) Experience.

24 (2) Quality and timeliness of past performance.

25 (3) Reliability and responsibility.

26 (4) Compliance with equal employment requirements.

27 (5) Compliance with wage, hours, and other fair labor standards.

28 (6) Subcontractors used by the firm.

29 (7) Integrity of the firm and its key personnel.

30 (8) Gifts given, or contributions made, to members or alternate  
31 members or employees of the authority.

32 (b) Neither the authority nor any of its organizational units shall  
33 contract or do business with any responding firm that knowingly  
34 provides false information in the questionnaire.

35 (c) Nothing in this section is intended to restrict the authority  
36 from requiring a similar questionnaire to be completed by any  
37 other construction company, engineering firm, consultant, legal  
38 firm, product vendor, or any other business entity seeking to  
39 contract with the authority.

1 (d) The authority may prequalify prospective contractors for  
2 particular types of supplies, services, insurance, or construction,  
3 and may limit consideration of bids or proposals to prequalified  
4 contractors.

5 SEC. 4. Section 130232 of the Public Utilities Code is amended  
6 to read:

7 130232. (a) Except as provided in subdivision (f), purchase  
8 of all supplies, equipment, and materials, and the construction of  
9 all facilities and works, when the expenditure required exceeds  
10 twenty-five thousand dollars (\$25,000), shall be by contract let to  
11 the lowest responsible bidder. Notice requesting bids shall be  
12 published at least once in a newspaper of general circulation. The  
13 publication shall be made at least 10 days before the date for the  
14 receipt of the bids. The commission, at its discretion, may reject  
15 any and all bids and readvertise.

16 (b) Except as provided for in subdivision (f), whenever the  
17 expected expenditure required exceeds one thousand dollars  
18 (\$1,000), but not twenty-five thousand dollars (\$25,000), the  
19 commission shall obtain a minimum of three quotations, either  
20 written or oral, that permit prices and terms to be compared.

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

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

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

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

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

- 38 (1) The contract shall be let to the lowest responsible bidder or,  
39 in the authority's discretion, to the responsible bidder who  
40 submitted a proposal that provides the best value to the commission

1 on the basis of the factors identified in the solicitation when the  
2 purchase price of all supplies, equipment, and materials exceeds  
3 one hundred thousand dollars (\$100,000). “Best value” means the  
4 overall combination of quality, price, and other elements of a  
5 proposal that, when considered together, provide the greatest  
6 overall benefit in response to requirements described in the  
7 solicitation documents. The contract shall be let to the lowest  
8 responsible bidder when the purchase price of the construction of  
9 all facilities exceeds one hundred thousand dollars (\$100,000).

10 (2) The authority shall obtain a minimum of three quotations,  
11 either written or oral, that permit prices and terms to be compared  
12 whenever the expected expenditure required exceeds three thousand  
13 dollars (\$3,000), but not one hundred thousand dollars (\$100,000).

14 (3) The authority may purchase supplies, equipment, and  
15 materials from a public auction sale, including public auctions  
16 held via the Internet, using the procedures established for all other  
17 participants in the public auction.

18 (4) The authority may participate in a procurement agreement  
19 involving other public entities that is identified by a procuring  
20 public entity or entities as a cooperative procuring agreement from  
21 which other public entities may make purchases or enter into  
22 contracts, and the authority may procure, and enter into contracts  
23 for, items purchased pursuant to that procurement agreement,  
24 notwithstanding that the authority may not be the procuring public  
25 entity, provided the procurement agreement is awarded or entered  
26 into by either of the following:

27 (A) One or more public entities or an organization of public  
28 entities, which may include the authority.

29 (B) A federal, state, or local public entity.

30 ~~(5) (A) Notwithstanding any other provision of this article, the~~

31 (5) A) *The* authority may award individual contracts, none of  
32 which shall exceed eight million dollars (\$8,000,000) per year,  
33 providing for the issuance of job orders for construction work with  
34 compensation for the work based on unit prices. No contract  
35 awarded under this paragraph may provide for the issuance of any  
36 single job order that would exceed one million dollars (\$1,000,000).  
37 The maximum amounts set forth in this paragraph shall be adjusted  
38 annually to reflect the percentage change in the California  
39 Consumer Price Index. The maximum term of a contract issued  
40 pursuant to this paragraph shall not exceed one year, plus four

1 option terms of one year each. The contracts shall be awarded to  
 2 the lowest responsive and responsible bidder. The lowest bid shall  
 3 be based upon the bidder’s percentage adjustment to the unit prices  
 4 for units of work listed and described either in (i) a book of unit  
 5 prices for units of work that is an industry standard and is  
 6 incorporated in the authority’s invitation for bid, or (ii) a schedule  
 7 of unit prices for units of work contained in the authority’s  
 8 invitation for bid.

9 (B) Notwithstanding Chapter 4 (commencing with Section 4100)  
 10 of Part 1 of Division 2 of the Public Contract Code, subject to the  
 11 approval of the authority, a contractor may enter into subcontracts  
 12 with subcontractors that were not listed in the bid for the job order  
 13 contract, but are listed in the contractor’s proposal for a job order  
 14 under the contract.

15 (C) *Nothing in this article or in this code shall prohibit the*  
 16 *authority from entering into job order contracts as an alternative*  
 17 *to any contracting procedures that the authority is otherwise*  
 18 *authorized or required by law to use.*

19 (E)

20 (D) For purposes of this paragraph:

21 (i) “Job order” means an order issued by the authority to a  
 22 contractor to perform construction work under a contract awarded  
 23 under this paragraph.

24 (ii) “Unit price” means the amount paid for a single unit of an  
 25 item of work.

26 SEC. 5. Section 130242 of the Public Utilities Code is amended  
 27 to read:

28 130242. (a) In addition to the other powers it possesses, and  
 29 ~~notwithstanding any other provision of law as an alternative to~~  
 30 ~~any contracting procedures the authority is otherwise authorized~~  
 31 ~~or required by law to use,~~ the authority may enter into contracts  
 32 with private entities, the scope of which may combine within a  
 33 single contract all or some of the planning, design, permitting,  
 34 development, joint development, construction, construction  
 35 management, acquisition, leasing, installation, and warranty of all  
 36 or components of (1) transit systems, including, without limitation,  
 37 passenger loading or intermodal station facilities, and (2) facilities  
 38 on real property owned or to be owned by the authority.

39 (b) The authority may award contracts pursuant to subdivision  
 40 (a) after a finding, by a two-thirds vote of the members of the

1 authority, that awarding the contract under this section will achieve  
2 for the authority, among other things, certain private sector  
3 efficiencies in the integration of design, project work, and  
4 components.

5 (c) A contract awarded pursuant to this section may include  
6 operation and maintenance elements, if the inclusion of those  
7 elements (1) is necessary, in the reasonable judgment of the  
8 authority, to assess vendor representations and warranties,  
9 performance guarantees, or life cycle efficiencies, and (2) does  
10 not conflict with collective bargaining agreements to which the  
11 authority is a party.

12 (d) Any construction, alteration, demolition, repairs or other  
13 works of improvement performed under a contract awarded  
14 pursuant to this section shall be considered a public works project  
15 subject to Chapter 1 (commencing with Section 1720) of Part 7 of  
16 Division 2 of the Labor Code, and shall be enforced by the  
17 Department of Industrial Relations in the same way it carries out  
18 this responsibility under the Labor Code.

19 (e) A contract under this section shall be let to the lowest  
20 responsible bidder whose bid is responsive to the criteria set forth  
21 in the invitation for bid, or, in the authority's discretion, to a  
22 contractor chosen by a competitive bidding process that employs  
23 selection criteria in addition to cost. ~~Any design work performed  
24 pursuant to this section shall be prepared and signed by an architect  
25 certificated pursuant to Chapter 3 (commencing with Section 5500)  
26 of Division 3 of the Business and Professions Code.~~ Notice  
27 requesting bids shall be published at least once in a newspaper of  
28 general circulation. The publication shall be made at least 60 days  
29 before the receipt of the bids. The authority, at its discretion, may  
30 reject any and all bids, and may readvertise. All bids and price  
31 proposals submitted pursuant to this section shall be presented  
32 under sealed cover and shall be accompanied by one of the  
33 following forms of bidder security: (1) cash, (2) a cashier's check  
34 made payable to the authority, (3) a certified check made payable  
35 to the authority, or (4) a bidder's bond executed by an admitted  
36 surety insurer, made payable to the authority. Upon an award, the  
37 security of each unsuccessful bidder shall be returned in a  
38 reasonable period of time, but in no event shall that security be  
39 held by the authority beyond 60 days from the time the award is  
40 made.

1 (f) When the design of portions of the project permits the  
2 selection of subcontractors, the contractor shall competitively bid  
3 those portions. The contractor shall provide to the authority a list  
4 of subcontractors whose work is in excess of one-half of 1 percent  
5 of the total project cost as soon as the subcontractors are identified.  
6 Once listed, the subcontractors shall have the rights provided in  
7 the Subletting and Subcontracting Fair Practices Act (Chapter 4  
8 (commencing with Section 4100) of Part 1 of Division 2 of the  
9 Public Contract Code).

10 SEC. 6. Section 130243 of the Public Utilities Code is repealed.