

Date of Hearing: April 17, 2012

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Pérez, Chair

AB 1783 (Perea) – As Amended: April 10, 2012

SUBJECT: Public contracts: small business preferences

SUMMARY: Requires the Department of General Services (DGS) to publish on the department's website, and make available to local agencies, a list of small businesses and microbusinesses that have been certified as such by DGS.

EXISTING LAW:

- 1) Designates DGS as the administrator of the state Small Business Procurement and Contract Act (Small Business Act), including, but not limited to, a small business certification process, a procurement process for state contracts of up to \$250,000, and a preference for bids made by certified small business and microbusinesses.
- 2) Establishes a 25% annual procurement participation goal, through Executive Order, for specific state entities to contract with small business.
- 3) Establishes a 25% small business participation goal for contracts financed with the proceeds of the infrastructure-related bond acts of 2006.
- 4) Establishes a 5% preference for bids made by certified small business and microbusinesses for the award of state procurement contracts. A single bid preference is limited to \$50,000. Non-small businesses must subcontract at least 25% of their contracts with small business to qualify for the small business bidder's preference.
- 5) Defines a small business as independently owned, not dominant in its field of operation, domiciled in California, employing 100 or fewer employees, and earning \$14 million or less in average annual gross revenues for the three previous years.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's purpose: According to the author, "AB 1783 will save time and money for our state and local government agencies as well as the small business community. Allowing a small business to become certified to contract with any agency in California by filling out just one form would provide a more business friendly process and help increase the number of California Certified Small Businesses.

Currently, in order to take advantage of business opportunities, such as government contracts, businesses may need to obtain specific and repetitive certifications. The process can be time consuming, burdensome, disruptive and costly.

The state already has a process to determine if a small business meets the requirement to be a certified small business. The bill would alleviate staff workload at local agencies by not requiring a small business to go through a repetitive certification process."

- 2) Federal Small Business Preference Program: The federal Small Business Act directs all federal agencies to have the maximum practicable opportunity for small businesses to participate in providing goods and services to the government. In practice, the Small Business Administration negotiates annual small business procurement preference goals with each federal agency and reviews each agency's results.
- 3) State Small Business Certification: DGS is responsible for the certification of small businesses for purposes of the state's small business preference. To become certified, DGS requires small businesses and microbusinesses to submit a single application, and supporting documentation, certifying that they:
 - a) Are independently owned and operated;
 - b) Not dominant in their field of operation;
 - c) Have their principal office in California;
 - d) Have owners (officers, if a corporation) domiciled in California; and
 - e) Meet threshold employee head count and annual revenues.

At the local level, individual jurisdictions manage the certification of small businesses and microbusinesses for purposes of local preferences. While some jurisdictions have signed memorandums of understanding with DGS agreeing to consider certified for purposes of local preferences any small business or microbusiness that has been certified at the state level, only a few jurisdictions participate. As a result, many jurisdictions require small and microbusinesses to repeat the certification process at the local level in a process that is often duplicative of state certification.

While AB 1783 does not require that local jurisdictions use the list of certified small businesses and microbusinesses produced by DGS, it does provide local jurisdictions with the option of using it as a reference for certifying small businesses for local preferences.

- 4) Overview of the national and California economy: Post-recession analysis traditionally divides the economic cycle into two stages: recovery and expansion. Recovery describes the period of GDP growth occurring after the economy hits bottom, or the "trough," and gives way to expansion when GDP growth surpasses its previous peak. Given this definition, the national economy entered the expansion phase of the economic cycle during the third quarter of 2011, when annualized GDP reached \$13.38 trillion, surpassing the previous GDP peak of \$13.36 trillion in the fourth quarter of 2007. At a more practical level, the U.S. economy added an average 152,000 net new jobs a month in 2011. In December 2011 and January 2012, however, the economy added 203,000 and 243,000 net new jobs respectively, pushing national unemployment down to 8.3%.

At the state level, the California economy has also been improving at a steady pace. Between 2010 and 2011, unemployment fell from a high of 12.4% to 11.8% in 2011. In January 2012 the unemployment rate fell even further to 10.9%, its lowest rate in three years. In terms of nonfarm jobs gains from 2010 to 2011, the state outperformed the national labor market with

1.4% growth compared to 1.2% nationally. In fact, the state registered job growth across most industries with the largest percentage gains coming from Information, Education, and Administrative Support Services. Only Real Estate and Leasing, Government, Management of Enterprises and Other Services saw continued job losses in 2011 but on a smaller scale than previous years.

In terms of international trade, the state continued to see sustained growth with the value of two-way trade increasing 11.9% from 2010 (based on year-to-date data from January through November 2011). The rate was slower than the increase registered in 2010 when the value of two-way trade surged 21.6% over 2009. In 2011, however, the value of imports grew by 11% while the value of exports through the state's custom districts rose by 13.8%. It should be noted that while exports only accounted for a third of the value of two-way trade, they suffered a smaller decline through the recession and have come back more strongly than imports as demand from Asian trading partners continues to be strong.

According to the March 2012 UCLA Anderson Forecast, state unemployment should improve to an average of 9.8% in 2013. Overall, the Forecast calls for a steady decrease in the California unemployment rate over the next two years, following a slow trajectory towards single-digit unemployment by the end of 2013 and reaching 7.7% by the end of 2014. In addition, according to Chapman University's A. Gary Anderson Center for Economic Research, the California Composite Index, a measure of overall manufacturing activity, increased to 60.3 in the second quarter of 2012, up from 56.6 during the first quarter. Historically, readings above 50 indicate expansion in the manufacturing sector. This is significant because, according to an analysis by the Milken Institute, for every job created in manufacturing, 2.5 jobs are created in other sectors. At the upper bound, electronic computer manufacturing has a multiplier effect of 16 jobs.

- 5) Small business: California's dominance in many economic areas is based, in part, on the significant role small businesses play in the state's \$1.9 trillion economy. Businesses with 1-99 employees comprise nearly 98% of all businesses, and they are responsible for employing more than 37% of all workers in the state.

Small businesses are crucial to the state's international competitiveness and are an important means for dispersing the positive economic impacts of trade within the California economy. California small businesses comprise 96% of the state's 60,000 exporters in 2009, which accounted for over 44% of total exports in the state. Nationally, small businesses represented only 31.9% of total exports. These numbers include the export of only goods and not services.

Historically, small businesses have functioned as economic engines, especially in challenging economic times. During the nation's economic downturn from 1999 to 2003, microenterprises (businesses with fewer than five employees) created 318,183 new jobs or 77% of all employment growth, while larger businesses with more than 50 employees lost over 444,000 jobs. From 2000 to 2001, microenterprises created 62,731 jobs in the state, accounting for nearly 64% of all new employment growth.

In fact, according to the Small Business Administration's Small Business Economy 2011, small businesses nationally outperformed large firms in net job creation nearly three out of four times from 1992 through 2010 when private-sector employment rose.

During this current economic downturn, however, small business owners have been especially hard hit. Equifax has reported that bankruptcies in California rose by 81% in 2009, as compared to 44% nationally. This trend continued in 2010 where the Equifax report stated that while in general bankruptcies were down across the nation including some regions in the west, small business bankruptcies in California accounted for almost 20% of all small business bankruptcies in the nation.

Moreover, according to an analysis by the Small Business and Entrepreneurship Council, of the 34,166 businesses that failed in California between 2007 and 2009, over 94%, or 32,160 businesses, were small businesses with less than 100 employees.

- 6) State procurement and small businesses: The Small Business Act (SBA), administered through DGS, was implemented more than 30 years ago to establish a small business preference within the state's procurement process that would increase the number of contracts between the state and small businesses. In 1989, a disabled veteran owned business enterprise (DVBE) component was added to state procurement practices.

Since 2001, there have been four Executive Orders (EOs) specifying a 25% goal for small business and 3% DVBE participation in state procurement contracts, including EO D-37-01 (2001), EO S-02-06 (2006), EO D-43-01(2001), and EO S-11-06 (2006). Statutory advancements were also made to strengthen the SBA, including SB 115 (Florez), Chapter 451, Statutes of 2005, which required DGS to establish a DVBE incentive program for state contracts; and AB 761 (Coto), Chapter 611, Statutes of 2007, which specifically codified the 25% small business participation goal for contracts related to revenues expended from the 2006 infrastructure bonds.

Despite the longstanding existence of the SBA, statutory upgrades, and EOs, the state's success in achieving small business and DVBE participation goals in state procurement contracts has been inconsistent.

For only the third time since the small business participation target was established in 2001, DGS has reported the state achieved its small business target by awarding 26.88% (\$2.40 billion), of the value of all contracts to small businesses in 2008-09. This represents a \$2.0 billion increase in contracts from 2007-08. The state did not achieve its 3% DVBE participation goal in 2008-09. DVBE contract awards, however, did increase to 2.96% (190 million) in 2008-09, up from 2.39% in 2007-08. California awarded \$182 million in small business and DVBE contracts in 2008-09.

In order to assist state entities in reaching the small business participation goals, contracting entities are provided a number of specific tools, including a streamlined procurement method, bid preferences, and lead small business procurement contracts at every agency. Under the streamlined procurement process, the awarding state entity is authorized to bypass the advertising, bidding, and protest provisions in the State Contract Act. This allows a contract to be awarded directly to a certified small business at a contract price established by checking the proposed rate with two other small businesses. Contracts offered under the streamlined procurement process are currently limited to contracts between \$5,000 and \$100,000. Of the \$2.5 billion of state contracts that were awarded to small businesses in 2008-09, \$225.4 million (17,310 contracts) were awarded through the streamlined procurement process. The

actual number may be higher as only 78 of 124 departments reported their small business procurement activities to DGS.

Certified small business bidders and other bidders that commit to using certified small businesses are also eligible for a 5% bid preference where the solicitations are made either on the basis of lowest responsible dollar bid, or on the basis of highest score, considering factors in addition to price. A single bid preference is limited to \$50,000 and the combined costs of preferences shall not exceed \$100,000.

Another important component of the state's effort to increase small business participation in state contracts is the work of the Small Business Advocate and the network of small business liaisons. Under existing law, every state agency is also required to have a single point of contact for small business state procurement opportunities.

- 7) Related legislation: Below is a list of bills related to this measure from the current and prior sessions.
- a) *SB 67 (Price) Small Business Participation in Public Contracts*: This bill would have authorized the Department of General Services to direct all state entities to establish an annual goal of achieving not less than 25% small business participation in state procurement contracts, as specified. Status: The bill was held on the Suspense File of the Assembly Committee on Appropriations 2011.
 - b) *SB 733 (Price) High-Speed Rail: Small Business Bidding Preference*: This bill would have required the High-Speed Rail Authority to include within its business plan a strategy ensuring the participation of California small businesses in contracts awarded during all phases of the project, as specified. Status: The bill was held in the Senate Committee on Appropriations 2011.
 - c) *AB 309 (Price) Public Contracts: Small Business Participation*: This bill would have required the establishment of a 25% small business participation goal for all state entities and directed the Department of General Services (DGS) to monitor each agency's progress in meeting this goal. It also would have required that the Office of the Small Business Advocate receive the same progress report information as state entities and directed DGS and the Office of the Small Business Advocate to work collaboratively to assist state entities in meeting their participation goal. This goal is currently provided for in Executive Order (EO) D-37-01 and EO S-02-06. Status: The bill was held under submission in the Assembly Committee on Appropriations, May 2010.
 - d) *AB 2287 (Bass) California Business Investment Service*: This bill would have established the Governor's Office of Economic Development and set a statutory 25% annual procurement goal for state contracts with small businesses. Status: The bill was held in the Assembly Committee on Appropriations, May 2010.
 - e) *AB 655 (Swanson) Contract Limitations on Small Business Preference*: This bill would have required state departments that award contracts pursuant to the Bond Acts of 2006 to consider and grant bid preferences to contractors on the basis of their status as small businesses, the type of community they are located in, and the number of employees they

hire from their community. Status: The bill died pursuant to Art. IV, Sec. 10(c) of the Constitution.

- f) *AB 761 (Coto) Codification of the Small Business Procurement Goal*: This bill would have required each state agency awarding contracts that are financed with proceeds from the infrastructure bonds approved by voters in November 2006 to establish a 25% small business participation goal for state infrastructure construction contracts, and to provide specified assistance to small businesses bidding on state infrastructure bond-related contracts. Status: The bill was signed by the Governor, Chapter 611, Statutes of 2007.

- g) *AB 1400 (Richardson) State Contracting and the Small Business Preference*: This bill would have required the Regents of the University of California and the Trustees of the California State University to each submit a report to the Department of General Services on the number of consulting, disabled veteran-owned business enterprise, and small business contracts each organization awarded for each fiscal year, on a campus-by-campus basis, and according to a specified format. Status: JEDE-related content removed. The bill failed passage on the Senate Floor 2007.

REGISTERED SUPPORT / OPPOSITION:

Support

Coalition of Small and Disabled Veteran Businesses
Small Business California
California Small Business Association
California Asian Pacific Chamber of Commerce
City of Selma
El Dorado Irrigation District
City of Reedley

Opposition

None Received

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