

Date of Hearing: April 22, 2014

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE ECONOMY

Jose Medina, Chair

AB 2022 (Medina) – As Amended: April 9, 2014

SUBJECT: Public contracts: Target Area Contract Preference Act

SUMMARY: Makes changes to the Target Area Contract Preference Act (TACPA), redefining what qualifies as an economically distressed area and identifying those individuals or groups at a high risk of unemployment. Specifically, this bill:

- 1) Redefines a distressed area to be in the top quartile of census tracts for having the highest unemployment and poverty in the state as defined by the Department of Finance (DOF).
- 2) Redefines a person with a high risk of unemployment to include, but not be limited to:
 - a) A person who is currently unemployed and has been unemployed for more than 200 days;
 - b) A person who has been unemployed for greater than 200 days within the last 365 days;
 - c) Veterans who served on active duty since September 11, 2001;
 - d) A person who has been incarcerated; and
 - e) A person who receives benefits of the Supplemental Nutrition Assistance Program.

EXISTING LAW:

- 1) Expresses Legislative intent that it is a benefit to the state to encourage and facilitate job maintenance and development in distressed and declining areas of cities and towns in California.
- 2) Authorizes the Department of General Services (DGS) to apply TACPA to bids from businesses that agree to perform the contract work in designated "distressed areas" by offering 5% worksite and 1% to 4% workforce bidding preferences in specified state service and commodity contracts valued in excess of \$100,000.
- 3) Defines a distressed area to be determined by the Governor's Office of Planning and Research (OPR) as an urban area with at least 3,000 people living in a cluster of census block groups with each meeting at least five of eight criteria including that the census block groups:
 - a) Are in the upper quartile for having the least amount of people over the age of 25 with a high school education;
 - b) Are in the upper quartile for highest unemployment rate;
 - c) Are in the lowest quartile for per capita income;
 - d) Are in the upper quartile for having the highest percentage of female head of households with children that live in poverty;
 - e) Are in the upper quartile for having the greatest percentage of people over the age of 65 living in poverty;
 - f) Are in the upper quartile for having the greatest percentage of people under the age of 18 living in poverty; and
 - g) Are in the upper quartile for having the highest population of nonwhites and Hispanics.
- 4) Defines eligible workforce groups to include:

- a) Economically disadvantaged youth;
 - b) Economically disadvantaged Vietnam-era veterans;
 - c) Economically disadvantaged ex-convicts;
 - d) Vocational rehabilitation referrals;
 - e) Youth participating in a qualified cooperative education program;
 - f) Recipients of supplemental security income benefits; and
 - g) General assistance recipients.
- 5) Specifies that preference only apply to bidders who are California based firms.
- 6) Requires bidders to certify, under penalty of perjury, to perform either 50% (for commodity contracts) or 90% (for labor service contracts) of the labor hours in the eligible TACPA area worksite(s). TACPA work sites may be in, directly adjacent to, or within a directly adjoining census tract blocks that form a contiguous boundary with the distressed area.
- 7) Limits TACPA preferences to 9% or a maximum of \$50,000 per bid. In combination with any other preferences, the maximum limit is 15% of the lowest responsible bid; and, in no case more than \$100,000 per bid.
- 8) Provides that TACPA preferences do not apply to contracts, such as construction, where the worksite is fixed by the contract terms.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's Purpose: According to the author, "The Target Contract Preference Act promotes employment and economic development at designated distressed areas by offering workforce bidding preferences in specified state contracts. When applying for TACPA eligibility, bidders must identify specific criteria including "census tract" and "block groups" to be eligible for the preference. Changes in the type of information collected in the last Census have not only made data collection more time consuming and expensive to obtain, it has also rendered the existing TACPA unworkable, therefore, the Department of General Services has stopped considering TACP preference in evaluating bids."
- 2) Framing the Policy Issue: This bill updates the TACPA geographic regions to those areas that the DOF designates as having the highest combined levels of poverty and unemployment in the state. This is similar to those areas designated last year for the New Hire Credit [*AB 93 (Assembly Budget), Chapter 69, Statutes of 2013*]. The bill also updates the categories of targeted workers to reflect among other groups, veterans who have served on active duty since September 11, 2001.

In considering the merits of the measure, Members may wish to consider that, as currently defined in statute, the TACPA geographic regions cannot be updated from the 2000 Census and that with the elimination of enterprise zones in 2013, TACPA is the only remaining procurement preference that incentivizes contracts in lower income neighborhoods. Comment 5 includes information on an amendment the author will be offering in committee.

- 3) Background on the Target Area Procurement Preference: TACPA was enacted in 1983 as an effort by the Legislature and the Governor to stimulate business development in economically disadvantaged areas. TACPA is primarily administered by DGS with help from OPR. Under TACPA, a 5% extra

credit is awarded in the contract bid evaluation phase to California firms that agree to undertake the work in distressed areas and an additional 1% to 4% may be included for committing to employ certain individuals in completing the contract. [*TACPA, Ch. 323, Statutes of 1983*].

The geographic boundaries of the distressed areas are determined by OPR based on eight statutorily defined criteria, as reported at the census block level. Recently, the availability of this data has changed. In 2003, the U.S. Census Bureau switched from gathering socioeconomic data in the “long form” survey component of the decennial census to an annual survey effort called the American Community Survey (ACS).

In addition to the change in how the data was collected, the U.S. Census Bureau no longer releases socioeconomic data for two of the eight TACPA criteria at the block group level, although it is released at the larger-scale census-tract level. In evaluating whether to simply change statute from census block group to census tract level, OPR and others, questioned whether the current criteria was best suited for an employment incentive. As an example, the existing locations include the poverty level of people over 65 and children under the age of 18.

AB 2022 proposes to determine distressed areas based on a comprehensive poverty and unemployment rate. The formula is simpler and already being prepared by DOF for use in the New Hire Credit.

- 4) How State Procurement Preferences Work: In order to assist agencies in reaching state participation goals, bidders for state contracts may include procurement preferences. The value of any single preference is limited to \$50,000 and the combined value of one or more preference cannot exceed \$100,000.

The state currently recognizes three preferences based on the type of business and one preference based on the location of the business. Business type preferences include small business, microbusiness and DVBE, which each have a maximum preference value of 5%. The bidder can either be one of these targeted business types or commit to subcontracting with one. The geographically-based TACPA provides a 5% preference for completing the contract in the location and up to an additional 4% for hiring local workers.

It is not uncommon for a single contract bid to include more than one preference, i.e. a small business owned by a DVBE would be entitled to submit a bid using two 5% preferences. The value of the preference is applied to either the bidders score or the contact amount of the submitted bid.

As an example, there are two qualified bidders, each being a large-size business and each having bid a job for \$250,000. If one of the companies committed to using a subcontractor that was both a small business and a DVBE, their bid would be scored as if it was \$225,000 after the 10% bid preference was applied. The state would still pay the \$250,000 amount, but it would be scored at the lower amount for competitive reasons. Since contracts are awarded to lowest responsible bidder, the business subcontracting with the DVBE small business would be awarded the contract.

If that same business was also located in a TACPA area, it could receive up to another 5% in preferences, regardless of who the business employed because the current state percentage cap is 15% in total. This would allow the business's bid to be evaluated at \$217,500.

- 5) Amendments: Staff understands the author will offer an amendment to remove the language that stated that the TACPA could not be used in conjunction with the Small Business and Disabled Veteran Owned Business (DVBE) option.
- 6) Related Legislation: Legislation related to this measure includes the following:
- a) *AB 93 (Assembly Committee on Budget) California Competes Tax Credit and State Sales and Use Tax Exemption*: This bill instituted three new tax programs, a Sales and Use Tax exemption for manufacturing and bio-tech equipment and similar purchases; a California Competes tax credit for attracting and retaining major employers; and a hiring credit under the Personal Income Tax and Corporation Tax for employment in specified geographic areas. Additionally, the bill results in the phasing-out and ending of certain tax provisions related to Enterprise Zones and similar tax incentive areas, and ending the current Small Business New Jobs Credit tax incentive program. The bill also provides for allocating the California Competes tax credit through the Governor's Office of Business and Economic Development to assist in retaining existing and attracting new business activity in the state. Status: Signed by the Governor, Chapter 69, Statutes of 2013.
 - b) *AB 172 (Weber) State Contracting Microbusiness*: This bill would have increased the microbusiness procurement preference from 5% to 7% for state contracts to purchase goods, services, information technology, and construction of state facilities, and allowed the preference to be awarded to either a microbusiness bidder or a non-microbusiness bidder that uses a microbusiness subcontractor. Status: Held on the Suspense File of the Assembly Committee on Appropriations, 2013.
 - c) *AB 366 (Holden) Women, Minority, and Disabled Veteran Business Enterprises*: This bill modifies the definitions for minority owned business, women owned business, and disabled veteran owned business enterprise to encourage contracting with publicly held companies. Status: Pending in the Assembly Committee on Appropriations.
 - d) *AB 550 (Brown) State Procurement Procedures for Small Businesses*: This bill would have made key changes to state procurement procedures for the purpose of increasing small business, including microbusiness, and disabled veteran-owned business enterprise participation rates. Status: Held on the Suspense File of the Assembly Committee on Appropriations, 2013.
 - e) *AB 1586 (Holden) Service Contract Hiring Priority*: This bill requires service contracts for over \$200,000 include a provision requiring the contractor give priority consideration in filling vacancies with individuals that have exhausted their unemployment, are a veteran, on parole or were formally incarcerated, or a resident of a targeted employment area, as defined under enterprise zone law. Status: Pending in the Assembly Committee on Accountability and Administrative Review.
 - f) *AB 1783 (Perea) Streamlining Small Business Certification*: This bill required the Department of General Services 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 the department. Status: Signed by the Governor, Chapter 114, Statutes of 2012.
 - g) *AB 2630 (Hueso) Procurement Reporting of Targeted Populations*: This bill would have required the Department of General Services, in preparing its report on state contracting activity, to include a list of activities each state agency used to inform small businesses of each of the existing

preferences available under state law, and provide the number of preferences used in bidding packages for the year. Status: Held in Senate Appropriations Committee, 2012.

- h) *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 no less than 25% small business participation in state procurement contracts, as specified. Status: Held on the Suspense File of the Assembly Committee on Appropriations, 2011.
- i) *SB 297 (Roth) Public Contracts and Disabled Veterans*: This bill increases the annual statewide participation goal for disabled veteran business enterprises applicable to certain state contracts, from 3% to 5%. Status: Pending in the Assembly Committee on Jobs, Economic Development, and the Economy.
- j) *SB 733 (Block) Disabled Veteran Business Enterprise Participation Goals*: This bill deletes provisions of law allowing an awarding department to accept submission of a disabled veteran business enterprise utilization plan to meet the 3% statewide participation goal for awarded contracts. The bill authorizes, instead, a new review process for demonstrating a business's long-term commitment to using veteran-owned businesses. Status: Pending in the Assembly Committee on Jobs, Economic Development, and the Economy.

7) Double Referral: The Assembly Committee on Rules referred this measure to two policy committees for review. AB 2022 was previously heard in the Assembly Committee on Accountability and Administrative Review and received an 8-1 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

Small Business California
The American Federation of State, County, and Municipal Employees
The California Asian Pacific Chamber of Commerce
The Veterans Caucus of the Democratic Party

Opposition

None received

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