

Date of Hearing: July 3, 2012

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Pérez, Chair

SB 301 (DeSaulnier) – As Amended: June 26, 2012

SENATE VOTE: Not applicable

SUBJECT: Office of the Small Business Advocate

SUMMARY: Makes technical changes to the duties of the Office of the Small Business Advocate (OSBA), located within the Governor's Office of Business and Economic Development (GO-Biz). More specifically, the bill expands the mandated information on the OSBA website to include the name and telephone number of the Department of General Services' small business advocate whose duty is to facilitate small businesses participating in state procurement opportunities and the small business advocate liaison at each state agency who has been designated to serve as a liaison to small business suppliers who are interested in contracting opportunities at their individual agency.

EXISTING LAW establishes the OSBA within the Governor's Office of Business and Economic Development (GO-Biz) for the purpose of supporting small business development in the state.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Small Business Preferences: The Small Business Act (SBA), administered through DGS, was implemented more than 30 years ago to increase the participation of small business within the state's procurement process. In 1989, a disabled veteran owned business enterprise (DVBE) component and a 3% annual procurement participation goal was added to SBA. While existing law has no annual small business goal, since 2001 there have been four Executive Orders (EOs) specifying a 25% annual goal for small business participation in state procurement.

In order to assist state government entities in reaching the small business and DVBE participation goals, contracting entities are provided a number of specific tools, including bid preferences, a streamlined procurement method, and designation of a small business procurement liaisons 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. Effective January 1, 2012, the maximum contract amount will increase to \$147,000 for goods and services and \$250,000 for public works.

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 and microbusiness bidders and other bidders that commit to using certified small business and microbusiness subcontractors are 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. DVBE bidders and firms that commit to using DVBEs may also receive a bid preference of between 1% and 5%. There are programmatic limits to the overall value of these preferences with a single bid preference limited to \$50,000 and the combination of all preferences not exceeding \$100,000 (many DVBEs are also certified small businesses, allowing for two preferences).

In order to qualify for state preferences and the streamlined procurement process, small businesses and DVBE need to be certified, which is undertaken through the Office of Small Business & Disabled Veteran Business Enterprise Services at DGS.

Another important component of the state's effort to increase small business participation in state contracts is the work of the Small Business Advocate, located at GO-Biz, and the network of small business liaisons at larger departments including the Department of Transportation and the Air Resource Board. Under existing law, every state agency is also required to have a single point of contact for small business state procurement opportunities.

- 2) California's Small Business Economy: 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 fewer than 100 employees comprise nearly 98% of all businesses, and they are responsible for employing more than 37% of all workers in the state.

Among other advantages, 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. Small businesses have consistently functioned as economic engines. 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 the most recent recession, however, small businesses have been especially hard hit. Equifax reported that bankruptcies in California rose by 81% in 2009, as compared to 44% nationally. This trend continued in 2010. While in general bankruptcies were down across the nation in 2011 (a 26% decrease), Equifax reported small business bankruptcies in California accounted for almost 20% of all small business bankruptcies in the nation. In 2011, the metropolitan statistical areas (MSAs) in western states continued to lead the nation in small business bankruptcies. Bankruptcies in the western region overall, however, experienced the most significant decrease in bankruptcy filings year over year from Q1 2011 to Q1 2012 in the nation - more than a 40% decline in some MSAs.

- 3) Related Legislation: The following is a list of related legislation.

- a) *AB 31 (Price) Small Business Contract Preferences and Enforcement*: This bill made several key changes to state procurement procedures including increasing the maximum contract threshold amount for awards to a small business and DVBE, under a specific streamlined procurement process, from \$100,000 to \$250,000. Further, the bill required contractors that made contract commitments to include small business or DVBE participation to report the final percent of the contract actually paid to these entities. Status: Signed by the Governor - Chapter 212, Statutes of 2009.
- b) *AB 926 (Ruskin) Loss Leader Notice Requirements*: This bill required certain advertising of state contracting opportunities to include a specified statement relating to an existing prohibition against the use of "loss leaders." Specifically, the bill requires every solicitation that appears in the California State Contracts Register including informational technology equipment to contain the following statement, "It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader. Status: The bill was signed by the Governor, Chapter 490, Statutes of 2009.
- c) *AB 761 (Coto) Small Business Preference for Infrastructure Bonds*: This bill 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: Signed by the Governor, Chapter 611, Statutes of 2007.
- d) *SB 115 (Florez) DVBE Procurement Preferences*: This bill made various changes to the DVBE Program, including requiring DGS to establish a state agency-wide mandatory DVBE participation incentive. The bill also requires the DGS Small Business Advocate to provide specified services to small businesses and certified DVBEs. Additionally, this bill requires DGS to adopt a streamlined reporting procedure for state agencies to use in reporting their DVBE participation to the Department of Veterans Affairs. Status: Signed by the Governor, Chapter 451, Statutes of 2005.

REGISTERED SUPPORT / OPPOSITION:

Support

None received

Opposition

None received

Analysis Prepared by: Toni Symonds / J., E.D. & E. / (916) 319-2090