

Date of Hearing: April 12, 2011

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Pérez, Chair

AB 150 (Perea) – As Amended: April 4, 2011

SUBJECT: Statutory Goals for Small Business Participation in Public Contracts

SUMMARY: Authorizes the Department of General Services (DGS) to direct all state entities to establish the goal to achieve not less than 25% small business participation and not less than 3% disabled veteran business enterprise (DVBE) participation in state procurement contracts, as specified. Specifically, this bill:

- 1) Encourages small business and DVBE to participate in state contracts by giving DGS the ability to direct all state agencies, departments, boards and commissions to achieve no less than the 25% small business procurement goal and not less than 3% DVBE procurement goal.
- 2) Requires state entities to implement a procurement and contract process to meet the stated procurement goals and to report to DGS, on an annual basis, statistics regarding small business and DVBE participation.
- 3) Authorizes DGS to establish policies and procedures to monitor the progress of all state entities toward meeting these procurement participation goals, as well as regularly sharing information with the Office of the Small Business Advocate on their progress.
- 4) Authorizes DGS to request an implementation and corrective action plan from state entities that fail to meet fiscal year goals.
- 5) Authorizes DGS to undertake reasonable means to assist agencies in improving small business participation rates.
- 6) Requires DGS to establish policies within the State Administrative Manual and the State Contracting Manual for all state entities in using the small business preference.
- 7) Requires DGS to actively promote small business and DVBE state certification.
- 8) Specifies that the proposals in this bill become effective July 1, 2012.

EXISTING LAW:

- 1) Designates DGS as the administrator the state Small Business Procurement and Contract Act (Small Business Act), including, but not limited to, a small business certification process, a streamlined procurement process for state contracts from \$100,000 to \$250,000, and a preference for bids made by certified small business and microbusinesses.
- 2) Establishes a 25% procurement participation goal, through Executive Order, for state agencies 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 3% DVBE contract participation goal for state entities when state moneys are used for construction, goods and services.
- 5) 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 business must subcontract at least 25% of their contract with a small business to qualify for the small business bidders' preference.
- 6) Requires DGS to establish a DVBE contract preference incentive to be used by state agencies when awarding contracts.
- 7) 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.
- 8) Defines a DVBE as a business entity that is at least 51% owned or controlled by one or more disabled veteran, as specified.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of the bill: According to the author, "Historically, small businesses have functioned as economic engines, especially in challenging fiscal times. Small business is a key economic driver of job growth and economic development and continues to play a leading role in the state's economy. The unemployment rate in California as a whole is 12.4%, however, the statistics are much worse in a lot of areas throughout the state. There are currently eight counties with unemployment rates above 20%. Too many cities are in dire need and currently struggle with close to 50% unemployment rate."
- 2) California 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 less than 100 employees comprise nearly 98% of all businesses, and they are responsible for employing more than 37% of all workers in the state.

Small- and medium-sized 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. Of the over 57,461 companies that exported goods from California in 2008, 96% were small- and medium-sized enterprises (SME) with fewer than 500 employees. These SMEs generated nearly two-fifths (44%) of California's exports in 2008. Nationally, SMEs represented only 31% of total exports. These numbers include the export of only goods and not services.

Small businesses function as economic engines, especially in challenging economic times. During the nation's economic downturn from 1999 to 2003, microenterprises (businesses

with less 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. According to a 2010 report from the California Senate Office of Research, in 2008 microenterprises employed four million people or 19% of the state's employment. Common types of microenterprises include engineering, computer system design, housekeeping, construction, landscaping, and personnel services.

- 3) The Small Business Act: 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 a 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 second time since the small business participation target was established in 2001, DGS has reported the state achieved its small business target by awarding 28.31%, or (\$2.65 billion), of the value of all contracts to small businesses in 2006-07. This represents a \$1.3 billion increase in contracts from 2005-06. The state did not achieve its 3% DVBE participation goal in 2006-07 as only 2.8% of contract dollars, (\$186 million) was awarded in contracts including DVBE participation. Although a consolidated report is required to be produced every year, the 2006-07 is the most current data.

- 4) Tools for achieving participation goals: In order to assist state entities to reach 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 contacts 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 \$250,000. Of the \$2.5 billion of state contracts that were awarded to small businesses, \$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. SB 1108 proposes that DGS develop administrative policies for better implementing this preference.

Another important component of the state's effort to increase small business participation in state contracts is through 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.

- 5) Proposed amendments: Staff understands that the author will propose amendments that do the following:
 - a) Include women and minority businesses as part of the 25% small business contract participation goal;
 - b) Make technical non-substantive changes.
- 6) Related legislation: Below is a list of related legislation from both previous and current legislative sessions:
 - a) AB 31 (Price) Public Contracts: Small Business Procurement and Contract Act: This bill makes 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 percentage of the contract actually paid to these entities. Status: This bill was signed by the Governor, Chapter 212, Statutes of 2009.
 - b) 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. Status: This bill was held under submission by Assembly Appropriations Committee in 2009.
 - c) AB 761 (Coto) Small Business Procurement: State Infrastructure Construction Goals: This bill requires 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: This bill was signed by the Governor, Chapter 611, Statutes of 2007.
 - d) AB 2773 (Price) Public Contracts: Small Business Procurement and Contract Act: This bill would have increased the maximum contract threshold amount for awards to small business, including microbusiness and DVBEs under the streamlined procurement process, from \$100,000 to \$250,000, as specified. Further, the bill required contractors

that made contract commitments to include small business or DVBE participation to report the final percentage of the contract actually paid to these entities. Status: This bill was held under submission in Senate Appropriations Committee in 2008.

- e) SB 67 (Price) Public Contracts: Small Business Participation: This bill requires the establishment of a 25% small business participation goal for all state entities and directs the Department of General Services (DGS) to monitor each agency's progress in meeting this goal. Status: Pending in Senate Appropriations Committee, set for hearing April, 11, 2011.
 - f) SB 115 (Florez) California DVBE Program: This bill makes 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: The bill was signed by the Governor, Chapter 451, Statutes of 2005.
 - g) SB 1108 (Price) Public Contracts: Small Business Participation: This bill would have made three enhancements to the Small Business Procurement and Contract Act (Small Business Act) including authorizing the implementation of a 25% small business procurement goal, the development of specific administrative procedures for implementing the small business preference and requiring the state to take a more active role in promoting certification of small businesses. Status: This bill was held under submission in Senate Appropriations Committee in 2010.
- 7) This bill is double referred to the Assembly Committee on Business, Professions and Consumer Protection.

REGISTERED SUPPORT / OPPOSITION:

Support

California Hispanic Chambers of Commerce
Coalition of Small and Disabled Veteran Businesses
Greater Fresno Area Chamber of Commerce
National Federation of Independent Business
Natoma Technologies
Small Business California

Opposition

Construction Employers Association

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