

Date of Hearing: July 6, 2011

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE  
ECONOMY

V. Manuel Pérez, Chair

SB 734 (Price) – As Amended: May 31, 2011

SENATE VOTE: 25-12

SUBJECT: High-Speed Rail: Small Business Bidding Preference

SUMMARY: Requires the High-Speed Rail Authority (HSRA) 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. Specifically, this bill:

- 1) Makes findings and declarations regarding the need to ensure that a fair proportion of high-speed rail system contracts are awarded to microbusinesses.
- 2) Requires a strategy to ensure the participation of California-certified small businesses in contracts awarded by HSRA during all phases of the project to be included into the business plan scheduled to be submitted on January 1, 2012 or as an addendum to be submitted no later than March 1, 2012.
- 3) Requires the HSRA to work with the Department of General Services (DGS) to prepare a small business, microbusiness, and disabled veteran business enterprise outreach and retention plan (SB plan) to ensure that the percentage of contracts awarded for architectural, engineering, manufacturing, and construction activities meets the state's existing annual 25% small business participation procurement goal.
- 4) Directs HSRA, when developing the SB plan, to consider examples of existing small business programs used by other public agencies in California, and be guided by provisions of the Small Business Procurement and Contract Act (Small Business Act).
- 5) Requires HSRA to adopt the SB plan no later than July 31, 2012.
- 6) Requires HSRA, prior to the adoption of the SB plan, to do the following:
  - a) Hold a board meeting on the draft SB plan at least one month prior to the board meeting at which HSRA intends to vote on the final SB plan;
  - b) Post both draft and adopted SB plans on the HSRA Internet web-site homepage; and
  - c) Include a summary of the SB plan in all procurement documents, as well as a web-link to the full SB plan.
- 7) Requires all bidders' conferences convened by the HSRA to include a presentation of the SB plan and the state's 25% small business contract participation goals. HSRA must request a DGS representative to attend all bidders' conferences to answer questions regarding the Small Business Act.

- 8) Provides that the HSRA is subject to the provisions of the Small Business Act, the 5% bid preference for small business, microbusiness and DVBEs including large businesses that subcontract with a small business, microbusiness or DVBEs.
- 9) Requires an additional 2.5% price preference or score of the bid amount to be granted to qualified state-certified microbusinesses.
- 10) Defines the following terms: disabled veteran business enterprise, microbusiness and small business, used in this section of law.

#### EXISTING LAW:

- 1) Establishes the High Speed Rail Act including Legislative findings and declarations and definitions relative to high-speed rail.
- 2) Designates the HSRA to prepare, publish, and adopt a business plan that shall be submitted to the Legislature no later than January 1, 2012 and every two years thereafter, as specified.
- 3) Designates DGS as the administrator the state 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 businesses and microbusinesses.
- 4) Establishes a 25% annual procurement participation goal, through Executive Order S-02-06, for specific state entities to contract with small business.
- 5) Establishes a 25% small business participation goal for contracts financed with the proceeds of the infrastructure-related bond acts of 2006.
- 6) 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 and the combined cost of preferences shall not exceed \$100,000. A large business must subcontract at least 25% of the contract with a certified small business to qualify for the small business bidders' preference.

FISCAL EFFECT: Unknown

#### COMMENTS:

- 1) Purpose of the bill: According to the author, "SB 734 ensures that small businesses get a slice of the multi-billion dollar High Speed Rail Economic pie. The bill requires the High Speed Rail Authority (Authority), in developing its business plan, to include a strategy to ensure participation of California certified small businesses in contracts awarded by the Authority. The bill also requires the Authority, in conjunction with the Department of General Services, to prepare an outreach and retention plan to ensure that State contracting agencies meet participation goals for small businesses, microbusinesses and Disabled Veteran Business Enterprises (DVBEs). In addition, SB 734 addresses the importance and challenges of California microbusinesses and grants them an additional contract preference of 2.5 percent. Although these smaller businesses comprise over 80 percent of California's

certified small businesses, they are disadvantaged when competing against their larger small-business counterparts.

Given the depressed economy, high unemployment rates and the positive impact the High Speed Rail project will have throughout the state, it is important that we ensure that the Authority operates with a clearly defined program that will provide opportunities for California small businesses, including its microbusinesses. SB 734 accomplishes these objectives."

- 2) High-Speed Rail Authority: SB 1420 (Kopp) Chapter 246, Statutes of 1996, created the HSRA with a nine-member governing board. The make-up of the board called for five members to be appointed by the Governor, two members by the Senate Rules Committee, and two members by the Speaker of the Assembly.

The HSRA was tasked with preparing a plan and design for the construction of an economically viable high-speed train line linking major metropolitan areas that would help sustain the state's long-term mobility and economic growth. In 2002, SB 1856 (Costa) Chapter 697, Statutes of 2002, authorized a \$9.95 billion bond to finance the new system. As part of the state budget process, the bond submission was delayed by several years.

In 2008, AB 3034 (Galgiani) Chapter 267, Statutes of 2008, revised Senator Costa's SB 1856 of 2002, authorizing the Safe, Reliable High-Speed Train Bond Act for the 21<sup>st</sup> Century (Proposition 1A). This later bill allowed the HSRA to develop a high-speed rail system in phases. Phase I connects Los Angeles through the Central Valley to San Francisco by 2020, and phase II would extend the system north to Sacramento and south to San Diego by 2026.

Proposition 1A authorized \$9.95 billion in general obligation bonds to support the project and required the HSRA to prepare a draft business plan, as well as authorized the HSRA to enter into contracts with private public entities for the design, construction and the operation of high-speed trains. In November 2008, the people of California approved Proposition 1A with a 52.7% vote.

In May 2011, it was announced that California, Illinois and 12 other states, along with Amtrak, will share \$2 billion in federal grants aimed at developing high-speed rail service. These moneys had been rejected by Florida and are in addition to the \$3 billion already awarded to California through the efforts of U.S. Congressman Jim Costa and other members of the California Congressional delegation.

- 3) 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 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- 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.

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 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.

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, with Equifax reporting 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.

- 4) 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 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 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.

- 5) Tools for achieving participation goals: In order to assist state entities 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 \$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 (including microbusinesses) and other bidders that commit to using certified small businesses (including microbusinesses) 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. SB 734 would allow for an additional 2.5% bid preference for microenterprise businesses that contract directly with the HSRA. This additional preference is not open to large contracts that subcontract with a microenterprise business.

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.

- 6) Related legislation: Below is a list of related legislation from both previous and current legislative sessions:
- a) AB 150 (Perea) Public Contracts: Small Business Participation: This bill would have required the establishment of a 25% small business and a 3% DVBE participation goal for all state entities and directs the Department of General Services to monitor each agency's progress in meeting this goal. Status: This bill was held in Assembly Appropriations Committee in May 2011.
  - 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 to monitor each agency's progress in meeting this goal. Status: This bill was held under submission by Assembly Appropriations Committee in May 2009.
  - c) AB 365 (Galgiani) High-speed Rail Authority: Small Business Certification: Penalties: This bill would have enacted penalties and sanctions relative to the certification of businesses as a small emerging business enterprise, microbusiness, or disabled veteran business enterprise (DVBE), as specified. This bill was held under submission by Assembly Appropriations Committee in May 2011.
  - d) 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.

- e) AB 1206 (Galgiani) High-speed Rail Authority: small business certification: penalties: This bill would have directed the High-Speed Rail Authority to adopt a small business enterprise program (to include small business enterprises, microbusinesses, and disabled veteran business enterprises), including an oversight and accountability component, and to report annually on the level of small business enterprise participation. This bill was held under submission by Assembly Appropriations Committee in May 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 733 (Price) High-Speed Rail: Small Business Participation: This bill would have required the California High-Speed Rail Authority (HSRA) to include in its January 1, 2012 business plan a strategy for ensuring California-certified small business participation in contracts awarded with state and federal funds during all phases of the high-speed rail project. It also requires the HSRA to have a strategy for working with the Employment Development Department to ensure that at least 25% of the project workforce at each worksite is from the local workforce. This bill was held under submission in Senate Appropriations Committee in May 2011.
- h) 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 May 2010.

#### REGISTERED SUPPORT / OPPOSITION:

##### Support

Asian American Architects and Engineers Association  
Asian Business Association  
Axiom Corporation  
California Black Chamber of Commerce  
California Small Business Association  
California Small Business Entrepreneurs  
Distec Supply Co., Inc.  
James Transportation Group  
Latin Business Association

Merriwether I Williams Insurance Services  
National Black Contractors Association  
National Concilio of America  
Sacramento Black Chamber of Commerce  
Structus Inc.  
Testing Services and Inspection Inc.  
The Wallace Group  
WAU & Company

Opposition

None on file

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