

Date of Hearing: April 21, 2009

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Pérez, Chair

AB 309 (Price) – As Introduced: February 17, 2009

SUBJECT: Public Contracts and Small Business Participation

SUMMARY: 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 agencies progress inmeeting this goal. Specifically, this bill:

- 1) Requires all state agencies, departments, boards, and commissions to establish and report on their progress in meeting or exceeding the 25% small business participation goal. This goal is currently provided for in Executive Order (EO) D-37-01 and EO S-02-06.
- 2) Requires state entities which fail to meet the small business participation goal by December 31, 2010, to submit an annual implementation and corrective action plan to DGS until the entity is able to meet or exceed the goal.
- 3) Requires DGS to monitor the progress of all state entities towards meeting the 25% small business participation goal, including notifying state entities of their individual progress in meeting the 25% participation goal.
- 4) Requires that the Office of the Small Business Advocate receive the same progress report information as state entities. Directs DGS and the Office of the Small Business Advocate to work collaboratively to review each implementation and corrective plan and explore ways to work with agencies that have not met their performance goal.
- 5) Requires, whenever possible, that state entities to use the streamlined procurement process for contracting with small businesses for goods and services in contract amounts under \$100,000 and for any construction contract exceeding \$120,000.
- 6) Requires DGS to actively promote small business certification, help small businesses market their products, goods, and services to the state, and promote the use of the Subscription Outreach Service of the State Contracts Register.
- 7) Requires state entities to work with DGS to help small business market products, goods, and services to the state by providing access to current bid information on their Internet website.
- 8) Requires the Office of the Small Business Advocate to collaborate with DGS on how to help small businesses secure financing.

EXISTING LAW:

- 1) Designated the DGS to administer the state Small Business Procurement and Contract Act (Small Business Act), including, but not limited to, a small business certification process and

a streamlined procurement process for state contracts under \$100,000, which is exempt from advertising, bidding, and protest provisions in the State Contract Act.

- 2) Declared state policy that small businesses and microbusinesses receive a fair portion of the total purchases and contracts or subcontracts for state goods, services, information technology, and construction.
- 3) Established a 25% small business participation goal for all contracts financed with the proceeds of the infrastructure-related bond acts of 2006.
- 4) Established a preference for bids made by certified small businesses and microbusinesses for the award of state procurement contracts of 5% where 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. Non-small businesses that subcontract at least 25% of their contracts with certified small businesses also qualify for the small business bidders' preference.
- 5) Requires each state agency to consolidate its existing staff functions that relate to contract opportunities for small businesses into a single point of contract for small businesses and designate a small business advocate as a liaison to small business suppliers.
- 6) Defines a small business as independently owned, not dominant in its field of operation, domiciled in California, employing 100 or fewer employees, and earning \$10 million or less in average annual gross revenues for the three previous years.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose of the bill: According to the author, AB 309 seeks to codify EO D-37-01 and EO S-02-06, establishing a small business participation goal of 25%. While the state has historically set a 25% goal for contracting with small businesses, the state continues to struggle to meet the goal. With substantial funding still available under the 2006 infrastructure bond acts the 2009 federal stimulus package, it is more important than ever to meet this important goal.

In 2006, California voters approved over \$40 billion in general obligation infrastructure development bonds. The funding provided by the bonds will be spent on improvements to roads, highways, public transit, flood control, schools, and affordable housing. Project funding is expected to occur over the next 10 years, although the Governor and Legislature have placed a priority on expediting project delivery.

In 2009, the federal government enacted a \$787 billion American Recovery and Reinvestment Act that includes over \$3 billion in funding for California infrastructure projects. These massive public works endeavors provide an opportunity for the state to use these moneys to strengthen the core of California's economy by expanding business opportunities for small contractors.

- 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 \$1.8 trillion economy. Businesses with less than 100 employees comprise more than 98.3% of all businesses, and are responsible for employing more than 57.9% 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 52,000 companies that exported goods from California in 2006, 95% were small- and medium-sized enterprises (SME) with fewer than 500 employees. These SMEs generated nearly half (44%) of California's exports in 2006. Nationally, SMEs represented only 29% of total exports. Again, 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. 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 (Flores), 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.

Notwithstanding the longstanding existence of the SBA, statutory upgrades, and EOs, the state's success in obtaining 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 that in 2006-07 the state achieved its small business target by awarding 28.31%, or \$2.65 billion, of the value of all contracts to small businesses. This represents a \$1.3 billion increase in contracts from 2005-06. The state did not achieve its 3% DVBE participation goal, however, as only 2.8% of contract dollars, \$186 million, was awarded in contracts including DVBE participation.

- 4) Streamlined procurement process: In order to assist agencies in reaching state participation goals, contracting entities are authorized to use a streamlined procurement method. This

method allows the process for awarding contracts to bypass the advertising, bidding, and protest provisions in the State Contract Act. Under the provisions of the Act, a contract may be made directly with a certified small business or DVBE at a contract price established by checking the proposed rate with two other small businesses or DVBEs.

Contracts offered under the streamlined procurement process are currently limited to contracts between \$5,000 and \$100,000. AB 31 (Price), which passed this committee earlier in the year, would increase this contract limit to \$250,000 for contracts for goods, services, and information technology. In 2006-07, 9,685 contracts were initiated using this streamlined procurement process, which accounts for \$211 million (7.43%) of the total DVBE and small business contracts. The California State University System reported using this process for 1,620 contracts totaling \$37 million in contracts.

- 5) Author's Amendments: Committee staff understand the author will offer the following amendments:
- a) Clarify that the 25% is an annual state contracting goal and does not necessarily need to be met for each individual contract.
 - b) Delete the requirement for DGS to notify state entities that they are deficient in meeting the 25% participation goal.
 - c) Clarify the "Statutory Informal Bidding Provisions" refer to the current streamlined procurement provisions.
 - d) Modify the requirement on how DGS will collaborate with Office of the Small Business Advocate on how to help small businesses secure financing.
 - e) Delete the requirement that state entities work with DGS to help small businesses market their products, goods, and services to the state by providing access to bidding information on their website, as a similar requirement is addressed in §11148.5 of the Government Code.
 - f) Specifically apply the requirements of this bill to any state moneys received by the University of California, California State University, and the California Community College System
- 6) Related legislation: Below is a list of related legislation:
- a) AB 31 (Price): 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: Awaiting hearing in the Assembly Appropriations Committee.
 - b) SB 356 (Wright): This bill requires an agency considering the adoption of a regulation to consult with those persons and businesses potentially affected and would delete the

condition that the agency only involve those parties if the proposal is large or complex.
Status: The bill is scheduled to be heard in the Senate Committee on Business, Professions and Economic Development on April 27, 2009.

- a) AB 761 (Coto): 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.
 - b) AB 2773 (Price): 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: Held under submission in Senate Appropriations Committee in 2008.
 - c) SB 115 (Florez): 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.
 - d) SB 642 (Denham): This bill increases 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: Set for hearing in Senate Governmental Organization Committee on April 28, 2009.
- 7) Double Referral: Assembly Rules Committee referred this bill to two policy committees. Should this measure pass the Assembly Committee on Jobs, Economic Development and the Economy, it will be referred to the Assembly Committee on Business and Professions.

REGISTERED SUPPORT / OPPOSITION:

Support

None received

Opposition

California Board of Accountancy

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