

Date of Hearing: June 22, 2010

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Perez, Chair
SB 1108 (Price) – As Amended: June 1, 2010

SENATE VOTE: 33-3

SUBJECT: Annual small business procurement goals

SUMMARY: Makes 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. Specifically, the bill:

- 1) Authorizes the Department of General Services (DGS) to implement a statewide small business procurement participation goal of 25%. Should DGS choose to make such a directive, state entities will be required to report annual small business participation rates. State agencies that fail to meet their goals may be required to submit a corrective action plan.
- 2) Requires DGS to develop and publish administrative management policies in the State Administrative Manual (SAM) for implementing the 5% procurement preference for bidders who are certified small businesses or who commit to subcontracting a portion of the contract to certified small businesses.
- 3) Requires DGS to actively promote certification of small businesses.
- 4) Specifies that the proposals in this bill are effective July 1, 2011.

EXISTING LAW:

- 1) Designates the DGS to administer the state Small Business Act and declares state policy that small businesses receive a fair portion of the total purchases and contracts or subcontracts for state goods, services, information technology, and construction.
- 2) Establishes, through Executive Order (EO), a 25% small business procurement goal.
- 3) Establishes a 25% small business participation goal for all contracts financed with the proceeds of the infrastructure-related bond acts of 2006.
- 4) Defines a small business as an 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: According to the Assembly Appropriations Committee analysis of a similar bill, implementation of this bill could have an ongoing annual general fund cost of \$300,000 for DGS and unknown GF costs, in excess of \$500,000, for workload associated with state agencies

and departments preparing annual reports. Further, to the extent that the 25% small business procurement goal results in an increase in the number of state contracts awarded to entities other than the lowest bidder, state contracting costs will increase. However, to the extent that this bill codifies an existing EO, these are not additional costs to the GF.

COMMENTS:

- 1) Author's purpose: SB 1108 authorizes the Department of General Services to direct state departments and agencies to achieve the goal of 25% small business participation in procurement and contracts and empowers DGS to assist agencies in developing corrective action plans should departments and agencies fail to meet the goal.

This bill codifies the Governor's EO S-02-06 and ensures that some of the ground small businesses have gained in state procurement and contracting within the last few years will continue in the next administration, regardless of party.

Over the last two fiscal years, state agencies have met and/or exceeded our state's 25% small business goal.

Codifying the Governor's EO will contribute to the continued success of California small businesses in state procurement and contracting and support their role as a key driver of job growth and economic development in the state's recovery efforts.

- 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 fewer than 100 employees comprise nearly 98% of all businesses, and are responsible for employing more than 37% of all workers in the state.

As an example, 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 55,878 companies that exported goods from California in 2007, 95% were small- and medium-sized enterprises (SMEs) with fewer than 500 employees. These SMEs generated more than two-fifths (44%) of California's exports in 2007. Nationally, SMEs generated only 30% of total exports.

Historically, small businesses have functioned as economic engines, especially in challenging economic times. During the nation's economic downturn from 1999 to 2003, 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.

Unfortunately during the current recession, small business in California have been especially hard hit and have been unable to play their previous roles in economic recovery. Equifax Inc. reports that small business bankruptcies are up 81% for the 12 months ending September 2009, as compared to the same period in the previous year. Nationally, bankruptcy filings were up 44%.

Because of their importance in the state economy, small business issues have been a particular focus of the Assembly Committee on Jobs, Economic Development and the Economy (JEDE) for the past several years. In March 2009, JEDE produced a state economic recovery strategy that included several key recommendations on the needs of small business, including helping small businesses meet their short-term capital needs, the need for regulatory reforms, and workforce development programs that are linked to the needs of businesses.

- 3) The Small Business Act: The Small Business Act, 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.

Since 2001, there have been two Executive Orders (EOs) specifying a 25% goal for small business procurement contracts, including EO D-37-01 (2001) and EO S-02-06 (2006). The 25% procurement goal was also codified for contracts related to the expenditure of moneys obtained through the sale of the 2006 infrastructure bonds, AB 761 (Coto), Chapter 611, Statutes of 2007.

Notwithstanding the longstanding existence of the SBA, statutory upgrades, and EOs, the state's success in obtaining small business 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 that in 2008-09 the state achieved its small business target by awarding \$2.5 (26.88%) of the \$8.92 billion in total state contracts to small businesses. Since 2006-07 \$8 billion in state contracts has been awarded to small businesses.

- 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 contracts 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) State Administrative Manual: Initially developed by the Department of Finance (DOF) in 1953, the SAM serves as a reference source for statewide policies, procedures, regulations and other information related to business management functions and services. The SAM is periodically updated as a means to improve statewide management practices. In 1990, responsibility for maintaining the SAM was transferred to DGS.

DGS also coordinates the updating of the State Contracting Manual (SCM) which contains policies, procedures, and guidelines for contracting services. While limited to service contracts, the SCM currently includes references to the small business contract report and the small business preference request. The author may want to consider directing DGS to also include and/or update small business preference policies in the SCM, as well as the SAM.

- 6) Related legislation: Below is a list of related legislation.
- a) AB 31 (Price) - Small Business Streamlined Contracting Process: This bill 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 those final percent of the contact actually paid to these entities. Status: Signed by the Governor, Chapter 212, Statutes of 2009.
 - b) AB 309 (Price) - 25% Small Business Goals for all State Contracts: This bill 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: Held in Assembly Appropriations Committee in May 2009.
 - c) AB 761 (Coto) - 25% Small Business Goal for GO 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) AB 177 (Ruskin and V. Manuel Pérez) - Penalties under the Small Business Act: This bill increases and conforms penalties for persons who falsely engage in activities relating to the Small Business Procurement and Contract Act, including small businesses, microbusinesses, and disabled veteran-owned business enterprises. Status: The bill is pending in Senate Veterans Affairs.
- 7) Double Referral: The Assembly Committee on Rules has referred this measure to both the Assembly Committee on Jobs, Economic Development and the Economy and the Assembly Committee on Business, Professions and Consumer Protection (BP&CP). Should this measure pass JEDE, it will be referred BP&CP for further policy consideration.

REGISTERED SUPPORT / OPPOSITION:

Support

California Small Business Association
Coalition of Small and Disabled Veteran Businesses
Kern Minority Contractors Association
National Federation of Independent Business
Natoma Technologies of Sacramento
San Francisco Board of Supervisors
San Joaquin Valley Black Contractors Association
Small Manufacturers Association of California

Opposition

None received

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