

Date of Hearing: April 20, 2010

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Perez, Chair

AB 1771 (Mendoza) – As Amended: April 12, 2010

SUBJECT: Public Contracts: Prison Industry Authority

SUMMARY: Provides that the requirement to purchase Prison Industry Authority (PIA) products shall not restrict state agencies from entering into purchase orders of \$25,000 or less with California certified small businesses (CSBs), microbusinesses, or disabled veteran business enterprises (DVBEs) and that this subdivision shall only apply to contracts for products provided at a lower price than the price available from the PIA. Also, specifies that this subdivision shall only apply to contracts for products provided at a lower price than the price available from the PIA.

EXISTING LAW

- 1) Establishes the PIA within the California Department of Corrections (CDC) for the purpose of employing and training prison inmates with good work habits, job skills for when they parole.
- 2) Authorizes the PIA to operate industrial, agricultural, and service enterprises which provide products and services needed by the state, or any political subdivision thereof, or by the federal government, or for any other public use.
- 3) Authorizes products purchased by state agencies to be offered for sale to inmates of the CDC and to any other person under the care of the state who resides in state-operated institutional facilities.
- 4) Requires that all items authorized to be produced shall be purchased at the prices fixed by the PIA. State agencies shall make maximum utilization of these products, and shall consult with the staff of the authority to develop new products and adapt existing products to meet their needs.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Author's purpose: The PIA is a prison inmate work program created in 1983 to develop profitable enterprises while helping inmates gain marketable job skills. The PIA currently employs approximately 5,900 inmates at 22 prisons. Penal Code Section 2807 requires state agencies to purchase products made by PIA, regardless of the price. According to the author, the PIA mandate drives up state costs and unnecessarily reduces business opportunities for CSBs, microbusinesses and DVBEs.

This bill simply cushions the impact of the PIA mandate by allowing state agencies to enter into contracts of \$25,000 or less with CSBs, DVBEs and microbusinesses, but only if the products are provided at a lower price than those available from the PIA. AB 1771 will

promote the interests of small businesses while preserving the substantial economic advantages the PIA has by selling products to state agencies that are required to buy from them. This bill introduces a small measure of competition and allows state agencies greater flexibility in determining which vendors meet their needs at the best price.

- 2) Prison Industry Authority: The PIA was established in 1983 to reduce the operating costs of the CDC and to offer inmates the opportunity to develop effective work habits and occupational skills, with the goal of ultimately being self-supporting. It currently operates under the guidance of an 11 member board consisting of representatives from industry, labor, state agencies and the general public.

The most recent available data is for fiscal year 2008-09. As of July 2009 the PIA operated 23 manufacturing, service and agricultural enterprises within 60 factories and farms located at the 23 of the State's 32 correctional institutions. Revenues in FY 2008-09 were reported at \$234 million.

The authority for purchasing goods and services for state government generally resides with DGS. However DGS can delegate its purchasing authority to state agencies. When delegating its authority, DGS instructs state agencies to first consider if their needs can be met by PIA. Currently, state law not only requires that state agencies make maximum use of PIA products, but also directs the state agencies to work with PIA to develop additional products to meet their needs.

- 3) Reports and Audits on the PIA: Since 1998, seven reports and audits have been conducted on the PIA, including three audits by the California State Auditor. The reports and audits generally conclude that the PIA can improve its pricing practices, such as having a more reasonable and consistent product cost, maintaining better documentation to justify product pricing and implementing a policy for special discount prices. Audits and reports also recommend that the PIA establish outcome oriented goals that can measure the program's effectiveness in employing and training inmates.
- 4) 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 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 generated only 29% 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, microenterprises (businesses with less than five employees) created 318,183 new jobs representing 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 businesses have been especially hard hit, with small business bankruptcies 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%, according to Equifax Inc.

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. In May 2009, JEDE held a special hearing to learn more about how the recession was impacting small businesses and in October, JEDE's review of the California Enterprise Zone Program included a panel on how the program responds to needs of small business.

- 5) 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 for the purpose of increasing the number of contracts between the state and small businesses.

In 1989, a DVBE component was established within the Small Business Act to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the sacrifices of Californians disabled during military service. Under the requirements of the DVBE program, each state agency is required, in awarding contracts throughout the year, to honor California's disabled veterans by taking all practical actions necessary to meet or exceed an annual 3% DVBE participation goal.

Since 2001, there have been four Executive Orders (EOs) and a number of statutory advancements made to strengthen the Small Business Act, 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 Small Business Act, statutory upgrades, and EOs, the state's success in obtaining small business and DVBE participation goals in state procurement contracts has been inconsistent.

Only twice since the small business participation target was established in 2001 through EO has DGS reported that the state achieved its 25% goal. In fiscal year 2007-08 the state did not achieve its small business target, as it only awarded 23.84%, or \$2.62 billion, of the value of all contracts to small businesses. Although procurement contract awards were down in 2007-08, there was an increase in the amount of contract dollars awarded. The state also did not achieve its 3% DVBE participation goal in 2006-07; the most recent numbers show a decrease from 2.8% to only 2.39% DVBE contracts awarded in 2007-08 and the state, again, saw an increase in awarded contract DVBE dollars to more than \$194 million.

- 6) Related Legislation: The following is a list of related bills.

- a) SB 1130 (Aanestad) Corrections: PIA - This bill will make a nonsubstantive change to that provision. Status: Pending in Senate Appropriations Committee.
 - b) SB 467 (Dutton) PIA Public Contracts– This bill authorizes agencies and departments to award contracts for less than \$25,000 for goods or services by California certified small businesses, microbusinesses, or Disabled Veteran Business Enterprises without seeking an exemption from the PIA mandate. Status: Held on suspense by Senate Appropriations Committee.
 - c) SB 1397 (Negrete McLeod) PIA Procurement - This bill would have required the PIA in procuring the purchase of raw materials, component parts, and goods and services to comply with certain provisions of law that give priority to small businesses and disabled veteran business enterprises in awarding contracts. Status: Held in Senate Public Safety Committee at request of author.
 - d) SB 2567 (Correa) Omnibus Committee Bill – This bill made technical and conforming changes related to state contracts and repealed the yearly reporting requirement by 12 specified state agencies to DGS on their use of goods provided by the PIA. Status: Signed by the governor, Chapter 951 Status of 2002.
- 7) Double Referral: Should AB 1771 be recommended "do pass" from the Assembly Committee on Jobs, Economic Development, and the Economy, this measure will be referred to the Assembly Committee on Public Safety for additional consideration.

REGISTERED SUPPORT / OPPOSITION:

Support

California Chamber of Commerce
California Correctional Supervisors Organization
California Peace Officers Association
California Police Chiefs Association
Coalition of Small Disabled Veteran Businesses
CB Enterprises
Small Business California

Opposition

None Received

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