

CONCURRENCE IN SENATE AMENDMENTS

AB 2762 (Carrillo and Muratsuchi)

As Amended August 24, 2018

Majority vote

ASSEMBLY: 70-0 (May 10, 2018) SENATE: 38-0 (August 28, 2018)

Original Committee Reference: **J., E.D., & E.**

SUMMARY: Increases the maximum value of a small business procurement preference used by a local agency when awarding a contract based on the lowest responsible bidder from 5% to 7% and sets a maximum financial value of \$150,000, as specified.

The bill also authorizes, effective January 1, 2019, through January 1, 2024, a specified local agency to establish a disabled veteran business preference and a social enterprise preference for use in a public contract awarded to the lowest responsible bidder. When more than one preference is applied to a bid package, the bill sets a maximum percentage value of multiple preferences at no more than 15% of the lowest responsible bidder and a maximum financial value of multiple preferences at no more than \$200,000. These provisions only apply to a public contract awarded by a local agency within Los Angeles County and the Bay Area, as specified.

The Senate amendments:

- 1) Expand the January 1, 2024, sunset provision on the social enterprise preference to also apply to a disabled veteran business preference.
- 2) Increase the maximum financial value of a single preference from \$100,000 to \$150,000.
- 3) Limit the use of the disabled veteran business preference and the social enterprise preference categories to contracts awarded by a local agency contracting in the following counties: Alameda, Contra Costa, Lake, Los Angeles, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.
- 4) Limit the substitution of a subcontractor to only instances where the substitution meets the requirements of a local agency's adopted policy. Further, the amendments require a local agency's substitution policy, at a minimum, include:
 - a) Identification of the reason for the substitution;
 - b) A requirement that a subcontractor that served to qualify the bid package for a preference be replaced with a subcontractor meeting the eligibility requirements for the same preference;
 - c) A requirement that the substitution of a subcontractor on a construction contract be afforded all the protections of the Subletting and Subcontracting Fair Practices Act of the California Public Contract Code. The substitution of a construction subcontractor that is a microbusiness or social enterprise may additionally be allowed based on a subcontractor's inability to execute the contract due to staffing or scheduling conflicts that have arisen since the submittal of the bid; and
 - d) A requirement that the substitution condition be verified by the local agency with the subcontractor.

FISCAL EFFECT: None

COMMENTS: While California's overall economic growth has consistently outpaced that of most areas of the nation, individuals that live in some regions of the state and those that belong to certain population groups still face recession-related poor economic conditions. Business ownership among minorities and especially women of color is considered to be one policy path toward upward mobility and economic security. With net new job growth highest among businesses with less than 20 employees, supporting small business results in multiple positive outcomes for addressing the systemic challenges of income inequality.

Public procurement represents a significant source of potential business revenue. A growing number of local agencies are seeking ways to leverage these ongoing government expenditures with public procurement policies that result in reinvestments in local communities. The authors have introduced this measure to increase the number of small businesses, disabled veteran-owned businesses, and social enterprises participating in public contracting.

More specifically, this bill establishes two new preference categories for local agency procurement activities and increases the value of local preferences to help make bids that include small businesses, disabled veteran businesses, and social enterprises more competitive against other bids. In implementing these new preferences and increasing the overall value of preferences, the bill requires the local agency to establish a targeted procurement policy that reflects best public procurement practices, including policies that:

- 1) Address potentially fraudulent behavior on the part of a contractor, subcontractor, or other individual committed for the purpose of qualifying for a preference;
- 2) Provide a process for determining whether a bidder has made a good faith effort to meet a procurement participation goal;
- 3) Require that substitutions of subcontractors only occur in instances where the qualifying conditions have been verified by local agency; and
- 4) Require that any contractor or subcontractor that is used to meet a preference serves a commercially useful function, as defined.

The policy committee analysis includes more information on the public procurement process, including how bid preferences are used in evaluating bids, the challenges that the state is facing in administering an effective targeted procurement program for Disabled Veteran Business Enterprises, and the rise of new forms of businesses, such as social enterprises.

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