

Date of Hearing: April 26, 2022

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Sabrina Cervantes, Chair

AB 2873 (Jones-Sawyer) – As Amended March 24, 2022

SUBJECT: California Tax Credit Allocation Committee: low-income housing credit: women, minority, disabled veteran, and LGBT business enterprises

POLICY FRAME: As unprecedented numbers of baby boomers retire from the marketplace, new businesses are emerging, and older companies are restructuring and/or disbanding. As with many issues, COVID-19 intensified this trend, which represents not only a generational shift but a significant alteration in the racial and ethnic makeup of the nation's working-age population. In 2014, California became the ninth state in the US where Latinos represent the majority population based on race and ethnicity, and millennials became the largest population group within the workforce based on age.

Companies and nonprofit organizations who wish to remain competitive are increasingly focusing on the hiring and retention of a more diverse workforce. Business ownership patterns by previously underrepresented groups (chart at the side) are also evolving. These changes affect customer and community needs, as well as quality and access to resources, technology, and business-to-business relationships. For many small and large firms, this means expanding outreach to identify new business partners, hiring workers with more diverse experiences, and joining networks to help navigate the evolving work environment. While adapting to these changes requires time and attention, these activities benefit businesses and nonprofits by increasing the pool of potential workers, partners, and suppliers.

Comparison of Business Growth by Race, Ethnicity, and Veterans	
<i>Business Ownership</i>	<i>Percent Change 2007 to 2012 Number of all Firms</i>
American Indian and Alaska Native Women	35.7%
American Indian and Alaska Native Men	7.4%
Asian American Women	44.3%
Asian American Men	25.7%
Black Women	67.5%
Black Men	18.8%
Hispanic Women	87.3%
Hispanic Men	39.3%
White Women	10.1%
White Men	0.7%
Veteran Women	29.6%
Veteran Men	7.7%
<small>Source: 2012 Survey of Business Owners</small>	

AB 2873 follows precedents set by other entities to be facilitators of this workplace transformation, including the California Public Utilities Commission and the California Energy Commission, who are already using reporting and outreach requirements to ensure larger portions of the state’s diverse businesses have opportunities to participate in public and private procurement opportunities. Under this measure, housing sponsors who receive a Low Income Housing Tax Credit allocation are required to report on the demographic and geographic makeup of the suppliers and contractors used to develop the housing project.

The analysis includes information on the California small business economy, state rulemaking practices, and studies on the cost of regulations to small businesses. There is no known opposition to this bill. This bill was heard in the Assembly Committee on Housing and Community Development on April 20, 2020, where the bill was approved on a 6 by 1 vote. The two committees have worked collaboratively on amendments to fine-tune the implementation of the proposed tracking and reporting structure. Those suggested amendments are included in Comment 6.

SUMMARY: AB 2873 requires housing sponsors who receive a TCAC allocation on or after January 1, 2023 to annually report to TCAC the diversity of the suppliers and contractors, as specified. Specifically, **this bill:**

- 1) Makes findings and declarations, including the following:
 - a) The essence of the American economic system of private enterprise is free, open, and transparent competition. Only through free, open, and transparent competition can free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be ensured.
 - b) The preservation and expansion of that competition are basic to the economic well-being of this state, and that well-being cannot be realized unless the actual and potential capacity of women, minority, disabled veteran, and LGBT business enterprises is encouraged and developed.
 - c) It is the declared policy of the state to aid the interests of women, minority, disabled veteran, and LGBT business enterprises to do all of the following:
 - i) Preserve reasonable and just prices and a free competitive enterprise.
 - ii) Ensure that a fair proportion of the total purchases and contracts or subcontracts for commodities, supplies, technology, property, and services for regulated public utilities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects, are awarded to women, minority, disabled veteran, and LGBT business enterprises.
 - iii) Maintain and strengthen the overall economy of the state.
 - d) The opportunity for full participation in the affordable housing construction system by women, minority, disabled veteran, and LGBT business enterprises is essential if this state is to attain social and economic equality for those businesses and improves the functioning of the state economy.
 - e) Public agencies and some regulated utilities that have established short- and long-range women, minority, disabled veteran, and LGBT business enterprise goals are awarding 30 percent or more of their contracts to these business enterprises.
 - f) Women, minority, disabled veteran, and LGBT business enterprises have traditionally received less than a proportionate share of affordable housing procurement contracts.
 - g) It is in the state's interest to expeditiously improve the economically disadvantaged position of women, minority, disabled veteran, and LGBT business enterprises.
 - h) The position of these businesses can be substantially improved by providing long-range substantial goals for procurement by affordable housing credit recipients of technology, equipment, supplies, services, materials, and construction work from women, minority, disabled veteran, and LGBT businesses.
 - i) That procurement also benefits affordable housing credit recipients and consumers of the state by encouraging the expansion of the number of suppliers for procurements, thereby encouraging competition among the suppliers and promoting economic efficiency in the process.
 - j) The long-term economic viability of this state depends substantially upon the ability of affordable housing projects to incorporate women, minority, disabled veteran, and LGBT businesses into those projects.

- 2) Requires TCAC to review the reports submitted by the housing credit awardees and establish guidelines for all affordable housing credit applicants and their subsidiaries and affiliates, which includes a procedure for verifying the claims made by a housing credit applicant in their required reports.
- 3) Requires a housing credit applicant that receives a credit allocation and any of their subsidiaries and affiliates, including, but not limited to, primary developer partners, to annually submit a report to TCAC that includes all of the following:
 - a) A detailed and verifiable plan for increasing procurement from women, minority, disabled veteran, and LGBT business enterprises in all categories.
 - b) Short- and long-term diversity goals and timetables, but not quotas, related to contractor race and ethnicity, contractor gender, and contractor census-tract income distribution.
 - c) Proposed methods for encouraging both prime contractors and awardees to engage women, minority, disabled veteran, and LGBT business enterprises in subcontracts in all categories that provide subcontracting opportunities.
 - d) The current status of, and, if any, strategies for, increasing procurement from women, minority, disabled, veteran, and LGBT business enterprises in all categories.
 - e) Certification that the information and claims in the report are accurate.
- 4) Commencing in the 2024 calendar year, requires TCAC to include in its annual report to the Legislature a summary of the commitments and the progress made in achieving those commitments by affordable housing companies, as follows:
- 5) Defines the following terms:
 - a) “Control” means exercising power to make policy decisions and active involvement in the day-to-day management of a business enterprise. Being an officer or director does not alone demonstrate active involvement.
 - b) “Disabled veteran business enterprise” has the same meaning as defined in Section 999 of the Military and Veterans Code.
 - c) “LGBT business enterprise” means a business enterprise that is at least 51-percent owned by a lesbian, gay, bisexual, or transgender person or persons; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more lesbian, gay, bisexual, or transgender persons; and whose management and daily business operations are controlled by one or more of those individuals.
 - d) “Minority business enterprise” means a business enterprise that is at least 51-percent owned by a minority group or groups, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.
 - e) “Women business enterprise” means a business enterprise that is at least 51-percent owned by a woman or women, or, in the case of any publicly owned business, at least 51 percent of the stock

of which is owned by one or more women, and whose management and daily business operations are controlled by one or more of those individuals.

- 6) Provides that the requirements for the housing developer reporting report and for TCAC to develop guidelines are severable. If any provision of these requirements or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

EXISTING LAW:

- 1) Establishes the TCAC for the purpose of allocating federal and state tax credits used to create and maintain affordable rental housing for low-income households in California. Among its duties, TCAC monitors projects financed through the sale of the allocated credits to ensure compliance with federal and state tax credit program requirements.
- 2) Requires TCAC to annually submit to the Legislature a report on its activities, which includes the following:
 - a) The total amount of low-income housing credits allocated by the committee;
 - b) The total number of units assisted by the credit that are, or are to be, occupied by households whose income is 60% or less of the area median gross income;
 - c) The amount of the credit allocated to each project, the other financing available to the project, and the number of units that are, or are to be, therein occupied by households whose income is 60% or less of area median gross income; and
 - d) Sufficient information to identify the project.
- 3) Establishes the California Disabled Veteran Business Enterprise Program, administered by the Department of General Services (DGS), for the purpose of addressing the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the sacrifices of California's disabled veterans made during their military service. Contracts for professional bond services are administered through the State Treasurer's Office.
 - a) Requires the Department of General Services (DGS) to implement a certification program for small businesses and disabled veteran business enterprises (DVBEs).
 - b) Applies the 3% DVBE participation goal on each awarding state agency, department, and officer that enters into a contract for materials, supplies, equipment, alteration, repair, or improvement. This requirement can be waived on a specific contract with the approval of the department director or another designated person.
- 4) Establishes a supplier diversity program by requiring the CPUC to direct each electrical corporation, gas corporation, water corporation, telephone corporation, and wireless telecommunications service provider with gross annual revenues exceeding \$25 million to annually submit a plan for increasing procurement with women, minority, disabled veteran, and LGBT business enterprises (WMDVLGBTBEs).
 - a) Requires supplier diversity program plans to include short-term and long-term goals and timetables and methods for encouraging contractors to engage WMDVLGBTBEs in all subcontracting categories, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects.

- b) Requires the CPUC to develop guidelines for programs implemented pursuant to the plans. Each participating company must submit an annual report on the implementation of programs established under a supplier diversity plan.
 - c) Provides that each electrical, gas, water, mobile telephone service provider, telephone corporation, cable television corporation, and direct broadcast satellite provider that is not otherwise required to submit a plan is encouraged to voluntarily adopt a plan for increasing WMDVLGBTBEs procurement and to voluntarily report activity in this area to the Legislature on an annual basis.
- 5) Defines, for the purpose of the CPUC Supplier Diversity Program, the following terms:
- a) “LGBT business enterprise” means a business enterprise that is at least 51-percent owned by a lesbian, gay, bisexual, or transgender person or persons; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more lesbian, gay, bisexual, or transgender persons; and whose management and daily business operations are controlled by one or more of those individuals.
 - b) “Minority business enterprise” means a business enterprise that is at least 51-percent owned by a minority group or groups; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more minority groups, and whose management and daily business operations are controlled by one or more of those individuals. The contracting utility shall presume that minority includes African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.
 - c) “Women business enterprise” means a business enterprise that is at least 51-percent owned by a woman or women; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more of those individuals.
- 6) Defines a “DVBE” as a business certified as a sole proprietorship, corporation, or partnership with its home office located in the US, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business. In addition, a DVBE meets all of the following:
- a) The disabled veteran is a veteran of the military, naval, or air service of the US, including, but not limited to, the Philippine Commonwealth Army, Regular Scouts, “Old Scouts,” Special Philippine Scouts, “New Scouts,” and those who have at least a 10% service-connected disability and are domiciled in the state.
 - b) The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.
 - c) The DVBE’s ownership of the business meets the following criteria:
 - i) If the DVBE is a sole proprietorship, it is at least 51% owned by one or more disabled veterans.
 - ii) If the DVBE is a publicly owned business, at least 51% of its stock is unconditionally owned by one or more disabled veterans.
 - iii) If the DVBE is a subsidiary, it is wholly owned by a parent corporation, but only if one or more disabled veterans unconditionally own at least 51% of the voting stock of the parent corporation.

- iv) If the DVBE is a joint venture, it is an entity in which at least 51% of the joint venture's management, control, and earnings are held by one or more disabled veterans.

FISCAL EFFECT: Unknown

COMMENTS & CONTEXT:

- 1) **The role of TCAC:** TCAC was established in 1987 with the purpose of allocating federal and state tax credits used to build and maintain affordable rental housing for low-income households in California. Among its other duties, TCAC monitors projects financed through the sale of the allocated credits to ensure compliance with federal and state tax credit program requirements.

TCAC is comprised of seven members, including five voting members and two advisors. The voting members are the Treasurer (Chairperson of the Committee), the Governor (who may choose the Director of Finance as his or her representative), the State Controller, the Director of Housing and Community Development, and the Executive Director of the California Housing Finance Agency. The non-voting (advisory) members are appointed by the Assembly and Senate and represent local governments.

The federal Low-Income Housing Tax Credit (LIHTC) program was established in 1986 as a replacement to the more commonly used housing tax incentives of the time, including accelerated depreciation. The LIHTC is competitively awarded to developers of affordable housing, who sell the credit to raise capital to finance affordable rental housing.

There are two types of federal tax credits, generally referred to as the 9% and 4% credits. These terms refer to the percentage of a project's "qualified basis," which sets the value of the credit that the taxpayer/investor may deduct from his or her federal income tax liability. The taxpayer/investor can take the annual tax credit each year for a ten-year period.

The federal per-capita tax credit ceiling for 9% credits is calculated annually and indexed for inflation. For 2021, each state has an annual housing credit ceiling of \$2.81 per state resident. Additionally, each state may qualify annually for a share of unused credits in a national pool.

Developments financed with tax-exempt bond proceeds may receive the 4% federal tax credit. The sponsors of affordable housing that will be financed with tax-exempt bond proceeds may apply to TCAC to receive the 4% federal tax credit. There is no annual cap on the amount of 4% credit that may be awarded by the state to such developments.

Developers of affordable housing projects that receive federal tax credits may also apply for an allocation of state tax credits. Projects serving farmworkers may apply for state tax credits regardless of their federal tax credit status.

The annual state credit ceiling is indexed for inflation, and for 2021, it was \$109.7 million. Investors take the state tax credit annually over a four-year period in contrast to the ten-year federal period.

Legislation in 2019 authorized the California Tax Credit Allocation Committee and the California Debt Limit Allocation Committee to issue an additional \$500 million in state tax credits in 2020 to be paired with the 4% federal program to bolster new construction of low-income housing. [AB 83 (*Budget Committee*), *Chapter 159, Statutes of 2019*]

- 2) **Statute and GO 156**: Beginning in 1986, the Legislature enacted a series of statutes, and the CPUC adopted GO 156 for the purpose of encouraging greater diverse business participation in utility contracts. Currently, utilities mandated to participate in GO 156 include electrical, gas, water, wireless telecommunications service providers, and telephone corporations with gross annual California revenues over \$25 million, including commission-regulated subsidiaries and affiliates. Similar program requirements are applied to community choice aggregators with gross California revenues over \$15 million.

Statute and GO 156 include rules and regulations for the utilities' compliance with the Supplier Diversity contracting program and require participating utilities to inform, recruit, and work toward having at least 21.5% of their procurement activities over a five-year period be with business enterprises primarily owned and operated by women-, minority-, disabled veteran-owned business enterprises. More specifically, the targets are 15% for minority-owned businesses, 5% for women-owned businesses, and 1.5% for DVBEs.

In 2015, LGBT-owned businesses were added to the supplier diversity program, and the CPUC adopted a five-year plan and framework for utilities to gather data for the CPUC to use in setting procurement goals for LGBT-owned businesses. On April 7, 2022, the CPUC announced LGBT-procurement goals of 0.5% for 2022, 1% for 2023, and 1.5% for 2024. In addition, the CPUC announced plans for new procurement participation goals for businesses owned by people with disabilities. Following three years of reporting by individual utility and communication companies, the CPUC will set a specific procurement participation goal for contracting with businesses owned by individuals with disabilities.

In 2020, utilities' participating in the Supplier Diversity Program expended \$11.7 billion on diverse suppliers, which was down by 7.5% from 2019. While down from the prior year, total purchasing with diverse suppliers still represented 30.1%, which exceeded the 21.5% goal. The most significant reductions were in the MBE and LGBTBE dollars, where purchasing decreased by 19.1% (\$8.5 billion in 2019 to \$6.9 billion) and 32.3% (\$63.6 million in 2019 to \$43.1 million), respectively. The LGBT spend percentage decreased from 0.17% in 2019 to 0.11% for 2020.

Overall, however, utilities exceeded the GO 156 goals as follows:

- MBE - 17.7% with a goal of 15%
- WBE - 10.5% with a goal of 5%
- DVBE – 1.8% with a goal of 1.5%

Nothing in GO 156 authorizes or permits a utility to use set-asides, preferences, or quotas in the administration of its supplier diversity program, and participating utilities and telecommunication companies retain the authority to use legitimate business judgment to select a supplier for a particular contract.

As a regulator of a wide range of business activities, including electrical, gas, water, mobile telephony service provider, and telephone corporations, the CPUC's supplier diversity activities have a broad impact and are often a framework for other supplier diversity programs. AB 2873 applies the CPUC model to TCAC.

However, one area where the two programs are not similar is how goals and reporting requirements are applied. AB 2873 requires all housing sponsors to have the same reporting and programming

requirements regardless of size or development experience. The CPUS, for example, scales reporting and activity requirements based on the size of the entity and its perceived capacity to undertake the additional strategy, program, and reporting work. For example, electrical corporations and other specified utilities with gross annual California revenues exceeding \$15 million but less than \$25 million have a more simplified form in which they annually submit diversity and inclusion data.

- 3) **The Roll of Certification:** In order for the procurement activities to count toward supplier diversity goals, a woman-, minority-, or LGBT-owned business enterprise has to become certified through an entity recognized by the CPUC's [Utility Diversity Supplier Program clearinghouse](#). The clearinghouse allows the CPUC to use third-party certifications to ensure that businesses qualify for each of the targeted reporting categories. It should be noted that some of these verifications do cost money, and some businesses find this as a barrier. The certifications are, however, a necessary part of the process.

The state currently certifies DVBES for free, as well as small businesses. Businesses owned and operated by disabled veterans apply through the California Disabled Veteran Business Enterprise Program, administered by the Department of General Services. Many state agencies host free events throughout the year, encouraging businesses to become certified.

The federal government provides free technical assistance to small businesses that want to be certified through federally-designated Procurement Technical Assistance Centers (PTAC). At a PTAC, small businesses can also get help in pulling together certification information for any of the federal small business certifications, including women, minority, and disadvantaged business certifications. The state also funds the PTACs through the Small Business Technical Assistance Expansion Program, and the Governor's January budget proposes an additional \$6 million to the current \$17 million program funding.

As of April 2022, the Clearinghouse database has a total of 8,329 verified diverse vendors, including:

- 3,742 women business enterprises;
- 4,012 minority business enterprises;
- 1,707 DVBES;
- 250 LGBT-business enterprises; and
- 41 Small Business Administration 8(a) certified businesses.

- 4) **Equal Protection Clause and Prop 209:** In March of 1998, the Ninth Circuit Court of Appeals determined in *Monterey Mechanical Co. v. Wilson*, that the provisions of Public Contract Code Section 10115 et seq., which held that statutory requirements to achieve minority and women business enterprise procurement participation goals or related good faith efforts were unconstitutional and violate the Equal Protection Clause of the Fourteenth Amendment of the US Constitution.

Article 1 of the Fourteenth Amendment states, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The central issues of the case were whether the mandate to classify certain contractors differently according to their ethnicity and sex violated the equal protection clause or had the state constructed “a narrowly tailored remedy to account for past discrimination. The Monterey Mechanical case, the court stated, upon reviewing the legislative intent of the women and minority business contracting statute, that California had “made no attempt to justify the ethnic and sex discrimination it imposed”.

Prior to the Monterey Mechanical decision (1996), California voters had passed Proposition 209 (Prop 209), which more comprehensively blocked the state’s ability to operate women and minority procurement programs. Under Prop 209, which added Section 31 to Article 1 of the California Constitution, the “state is prohibited from discriminating against, or granting preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education or public contracting”.

As a result of these two cases, Governor Wilson issued Executive Order W-172-98, which stated, in part, that every state department was to cease any enforcement of the minority and women business enterprise participation goals or any related good faith effort requirements associated with Public Contract Code Section 10115 et seq. with respect to any non-federally funded state contracts or amendments on or after March 10, 1998.

In implementing the executive order, the California Department of Transportation (Caltrans) issued instructions that DBEs would only be required in projects that were funded in part or in whole by federal Department of Transportation dollars and would be optional for projects funded by local or private entities. The Local Assistance Program Guidelines issued by Caltrans in April 1998 specifically retained the requirement that “DBE program requirements must be included if Caltrans awards and administers the construction contract.”

The Monterey Mechanical decision did not address, and therefore it is generally recognized that it does not apply to the DVBE provisions in state law. AB 2873 does not apply to state funds, state procurement, or state hiring practices, which are specifically identified in Proposition 209. However, the author’s office has indicated that a cover letter potentially related to these issues was issued by the Office of the Legislative Counsel’s Office when the bill was initially drafted. Clarification of the issue would be useful as the measure moves through the legislative process.

- 5) **Ethnicity, Race, Gender, and Sexual Orientation (ERGSO):** Existing law encourages businesses contracting with the state to voluntarily provide information on the business owner’s ethnicity, race, gender, and sexual orientation. ERGSO data is captured for goods, services, and construction.

Awarding departments continue to report to DGS that contractors fail to complete the voluntary surveys. As noted earlier in the analysis, DGS is updating the survey and putting it online to make it easier for businesses to report. In 2019-20, *only 40% of departments had ERGSO data to share*. A few highlights from the report:

- **Contracts by Ethnicity:**

- Business-owners who self-identified their ethnicity as “Hispanic” reported the largest dollars awarded overall at \$7.8 million, of which 86% was in service-related contracts.
- Business-owners who self-identified their ethnicity as “Other” and “Asian-Indian” reported receiving \$7 million each, with the majority of dollars awarded in Services.

Chart 4 - 2019-20 Contract Activity – Ethnic Classifications				
Ethnicity Classifications	Goods	Services	Construction	Totals
Asian-Indian	\$554,153	\$4,509,541	\$1,870,491	\$6,934,184
Black	\$5,724	\$875,926	\$125,000	\$1,006,650
Hispanic	\$460,759	\$6,747,566	\$606,066	\$7,814,392
Native American	\$18,516	\$226,448	\$90,000	\$334,965
Pacific-Asian	\$1,382,019	\$1,621,927	\$0	\$3,003,946
Other	\$1,896,617	\$4,529,720	\$518,064	\$6,944,401
TOTALS	\$4,317,788	\$18,511,128	\$3,209,621	\$26,038,537

Source: DGS Consolidated Report 2019-20 based on 40% of departments responding

• **Contracts by Race:**

- Business-owners who self-identified their race as “White” reported receiving the largest amount of contract dollars overall at nearly \$79 million, of which \$44 million was in Construction.
- Business-owners who self-identified their race as “Asian” received the third-highest amount of contract dollars overall, which was reported at almost \$10 million, of which more than half, \$4.7 million, was in Services.
- Business-owners who self-identified their race as “African American” received just under \$1 million overall, of which 87% was in Services.
- Business-owners who self-identified their race as “Other” received \$20 million in contracts, of which \$18 million was in Services.

Chart 5 - 2019-20 Contract Activity – Race Classifications				
Race Classifications	Goods	Services	Construction	Totals
American Indian or Alaska Native	\$20,755	\$569,621	\$229,350	\$819,726
Asian	\$599,418	\$4,724,052	\$4,012,855	\$9,336,325
Black or African American	\$5,724	\$866,426	\$125,000	\$997,150
Native Hawaiian or Other Pacific Islander	\$5,003	\$263,662	\$0	\$268,665
White	\$11,344,111	\$23,099,700	\$44,508,808	\$78,952,618
Other	\$1,400,903	\$18,092,999	\$593,162	\$20,087,065
TOTALS	\$13,375,914	\$47,616,460	\$49,469,175	\$110,461,549

Source: DGS Consolidated Report 2019-20 based on 40% of departments responding

• **Contracts by Gender and Sexual Orientation:**

- Business-owners who self-identified their gender as “Male” received the most dollars in all contracting categories for \$82 million, with \$36 million in service-related contracts and \$39 million in construction-related contracts.
- Business-owners who self-identified their gender as “Female” received \$28 million in contract dollars overall, with \$10.2 million in service-related contracts and \$11.6 million in construction-related contracts.
- Business-owners who self-identified themselves as “Transgender” received \$613,000 in service-related contracts.

Chart 6 - 2019-20 Contract Activity – Race Classifications				
Gender Classifications	Goods	Services	Construction	Totals
Male	\$6,584,152	\$36,516,490	\$39,109,917	\$82,210,560
Female	\$6,069,156	\$10,296,262	\$11,682,187	\$28,047,604
Transgender	\$0	\$613,049	\$0	\$613,049
TOTALS	\$12,653,308	\$47,425,801	\$50,792,104	\$110,871,213

Source: DGS Consolidated Report 2019-20 based on 40% of departments responding

- Business-owners who self-identified their sexual orientation as “Lesbian” received nearly \$3 million in contracts, with \$2.9 million of those contract awards being for goods-related contracts. This was the highest amount of dollars among individuals who self-identified as either Gay, Lesbian, or Bisexual.
- Business-owners who self-identified their sexual orientation as “Bisexual” received the highest amount of service-related dollars at \$349,500.

Chart 7 - 2019-20 State Contracting – Sexual Orientation				
Sexual Orientation Classifications	Goods	Services	Construction	Totals
Lesbian	\$2,935,964	\$63,706	\$0	\$2,999,670
Gay	\$19,227	\$105,654	\$13,634	\$138,515
Bisexual	\$19,950	\$349,548	\$0	\$369,498
TOTALS	\$2,975,141	\$518,908	\$13,634	\$3,507,683

Source: DGS Consolidated Report 2019-20 based on 40% of departments responding

- 6) **Proposed Amendments:** Below is a list of amendments developed in consultation with the Assembly Committee on Housing and Community Development.
- a) Requires TCAC to develop guidelines for recipients of housing credit applications to use in preparing a supplier and contractor diversity plans.
 - b) Specifies that the reporting covers contracts, including subcontracts, directly related to the development and construction of the housing project for which a credit was allocated.
 - c) Requires TCAC to consider the reporting frameworks, forms, and definitions used in other supplier and contractor diversity programs in which housing sponsors may be reporting.
 - d) Identifies the type of data that is required to be reported, which includes:
 - i) Total contracting activity per year and per project, which may include multiple years.
 - ii) Contracting activity by each of the targeted business-owner groups
 - iii) Contracting activity by geographic location of the contractor
 - iv) Contracting activity by category of contracts, including technology, goods, services, and construction.
 - e) Sets housing credit allocations on or after January 1, 2024 as the reporting and project trigger. From this point, additional triggers are based.
 - f) Requires women, minority, disabled veteran, and LGBT businesses be certified by a third party and authorizes TCAC to align its certification policies with those used by the CPUC.
 - g) Phases-in the reporting requirements of housing sponsor requirements based on total number of affordable housing projects. The trigger is 5 or more projects.

- h) Delays the requirement for a housing sponsor to adopt supplier and contractor diversity goals and timelines to the second year of reporting. Delays the requirement for a housing sponsor to report on geographic location to the third year of reporting.
- i) Expresses legislative intent that all housing sponsors, regardless of whether they are mandated, are encouraged to adopt a plan for increasing supplier and contractor opportunities for women, minority, disabled veteran, and LGBT businesses.
- j) Standardizes the use of the term “housing sponsor” to refer to the entity responsible for reporting.
- k) Requires TCAC to adopt supplier and contractor diversity goals five years after the implementation of the bill.

7) **Related Legislation:** Below is a list of bills from the current and prior sessions.

- a) **AB 83 (Assembly Budget Committee) Housing and Homeless Trailer Bill:** This is the housing and homelessness trailer bill for the 2020-21 budget. Among other things, the bill:
 - i) Specifies that tax allocations amounts be available in the calendar year by the California Tax Credit Allocation Committee (TCAC) and the California Debt Limit Allocation Committee have adopted regulations, rules or guidelines to align programs of both committees with the objective of increasing production and containing costs.
 - ii) Revises allocation methodology for the 2021 calendar year and thereafter, when CTCAC and CDLAC develops, regulations, rules, or guidelines that includes a scoring system that maximizes the efficient use of public subsidy and benefit created through the private activity bond and low-income housing tax credit programs. The factors for determining the efficient use of public subsidy and benefits are required to include all of the following: (a) The number and size of units developed including local incentives provided to increase density. (b) The proximity to amenities, jobs, and public transportation. (c) The location of the development. (d) The delivery of housing affordable to very low and extremely low-income households by the development.

Status: Chapter 159, Statutes of 2019

- b) **AB 865 (Alejo) Energy Commission Awardee Diversity:** The bill requires the California Energy Commission to establish guidelines to encourage grantees and borrowers to engage women, minority, disabled veterans, and LGBT business enterprises in subcontracts, as specified. Status: Signed by the Governor, Chapter 583, Statutes of 2015.
- c) **AB 873 (Davis) CPUC Procurement Contracts with Water Companies:** This bill requires each water corporation with 10,000 or more service connections to submit annual plans for increasing procurement from women- and minority-owned businesses and DVBEs to encourage each electrical, gas, water, and telephone corporation that is not required to submit a plan under current law to voluntarily adopt a plan for increasing women, minority, and DVBE procurement in all categories. Status: Signed by the Governor, Chapter 316, Status of 2008.
- d) **AB 1678 (Gordon) LGBT-Owned Business Enterprises:** This bill expands the provisions of the CPUC Supplier Diversity Program to include LGBT business enterprises. Status: Signed by the Governor, Chapter 633, Statutes of 2014
- e) **AB 1918 (Davis) CPUC Procurement Wireless Telecommunications:** This bill requires the CPUC to require specified wireless telecommunications service providers to annually report on

their progress in increasing contracting with women- and minority-owned businesses and DVBEs. Status: Signed by the Governor, Chapter 456, Statutes of 2010.

- f) **AB 2758 (Bradford) CPUC Minority and Women Procurement Goal Reporting:** This bill requires the CPUC to include in their required report to the Legislature, the renewable energy, wireless telecommunications, broadband, smart grid and rail projects as categories for which utilities should increase procurement from women, minority and DVBEs, as specified. Status: Signed by the Governor, Chapter 475, Statutes of 2010.
 - g) **AB 3678 (Moore) CPUC Procurement Goals:** This bill codified the broader parameters of GO 156, and requires electrical, gas, and telephone corporations (with gross annual revenues exceeding \$25 million) to annually submit a detailed and verifiable plan for increasing women- and minority-owned business procurement in all categories that includes short- and long-term goals and timetables, and furnish an annual report. It also required the CPUC to establish guidelines for the plans. Status: Signed by the Governor, Chapter 1259, Statutes of 1986.
 - h) **SB 255 (Bradford) Procurement Goals for Community Aggregators:** This bill expands the California Public Utilities Commission supplier diversity program by lowering the annual revenue threshold for participation from \$25 million to \$15 million for certain providers and requiring community choice aggregators to report specified information. This bill also encourages distributed energy resource companies, energy storage companies, and certain wholesale electric generators to participate in the program. Status: Signed by the Governor, Chapter 407, Statutes of 2019.
 - i) **SB 2398 (Dills) CPUC DVBE Procurement Goal:** This bill included DVBEs in the classes of entities eligible under women- and minority-owned business programs. A subsequent CPUC decision includes disabled veteran-owned business enterprises (D. 95-12-045) and establishes a 1.5-percent goal for disabled veteran-owned businesses. Status: Signed by the Governor, Chapter 516, Statutes of 1990.
- 8) **Double Referral:** The Assembly Committee on Rules has referred this measure to the Assembly Committee on Housing and Community Development (H&CD) and the Assembly Committee on Jobs, Economic Development, and the Economy. This measure passed H&CD on a 6 to 1 vote.

REGISTERED SUPPORT / OPPOSITION:

Support

California Community Builders
 California Community Economic Development Association (CCEDA)
 California Yimby
 Initiate Justice
 LISC Los Angeles
 LISC San Diego
 Los Angeles Brotherhood Crusade - Black United Fund, INC.
 South Bay Yimby
 The Central Valley Urban Institute

Opposition

None on File

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