

## How a Bid Preference Works

Bidders for state contracts may include procurement preferences as a means to strengthen their bids' competitiveness. The value of any single 5% preference is limited to \$50,000 and the combined value of two or more preferences cannot exceed 15% or \$100,000, whichever is lower.

The state currently recognizes two preferences based on the type of business and one preference based on the location of the business and the employees who undertake contract work. Business type preferences include a 5% preference for bids that include a small business or microbusiness as either a prime or subcontractor. The geographically-based TACPA provides a 5% preference for completing the contract in an economically distressed area and up to an additional 4% for hiring economically disadvantaged workers.

The state also offers a DVBE business incentive, which is similar to a preference, but the exact percentage value is determined by the contracting entity on a per bid basis and applied at a different point in the bid review process than the 5% procurement preference process. It is not uncommon for a bidder to apply a combination of preferences, as well as the DVBE incentive, in his or her bid package.

When a small business preference is claimed, it is calculated as 5% of the net bid price of the lowest responsible bidder. As an example, Bidder A is the lowest responsible bidder with a \$5 million bid. Bidder A is not a small business and did not include small businesses as subcontractors.

When the bids are opened, Bidder A is identified as having submitted the lowest responsible bid. The contracting agency then multiplies \$5 million by 0.05 (5%) to determine \$250,000 as the maximum value of the preference. Because of the financial cap, the total value of the preference would be limited to \$50,000.

Bidder B is a certified small business and submits a \$5.1 million bid. In evaluating Bidder B's bid price, the contracting department would subtract the preference adjustment from the net bid price (\$5.1 million - \$50,000 = \$5.05 million). In this example, under existing law, the non-small business bidder, Bidder A, would be awarded the contract because the value of the incentive is insufficient to compete with the lowest bid.

If, however, Bidder B also committed to complete the contract in an economically distressed area, an additional \$50,000 preference would be added to the calculation of the adjusted bid price. This second preference would be sufficient to meet the value of the lowest responsible bidder. More specifically, Bidder B's adjusted bid would be \$5 million (\$5.1 million - \$100,000), which is the same as Bidder A. All things being equal, the contract award goes to the lowest responsible small business bid. Please note the preference and incentive do not change the actual bid price, the calculations are performed in order to compare and rank bids.

While utilizing two 5% preferences was sufficient to have the small business be awarded the contract in this example, sometimes the differences between bids are larger. This is especially true on larger projects. Determining an appropriate balance between increasing small business participation in state procurement against increased costs to the General Fund has been the subject of several bills. In 2015, the committee heard and passed unanimously AB 1125 (Weber), which proposed to increase the value of the small business preference to \$100,000 and to \$150,000 when combined with other preferences.

With 75% of DVBEs having a dual certification as a small business, local agencies will likely encounter a bidder that qualifies for more than one preference.

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