

ASSEMBLY BILL

No. 848

Introduced by Assembly Member Niello

February 26, 2009

An act to amend Section 14838 of the Government Code, relating to state contracting.

LEGISLATIVE COUNSEL'S DIGEST

AB 848, as introduced, Niello. Small Business Procurement and Contract Act: disabled veteran-owned small business preference.

The Small Business Procurement and Contract Act requires state agencies entering into contracts for the provision of goods, information technology, and services to the state, and the construction of state facilities, to provide for a preference up to and including 5% for any bid of a small business and microbusiness, or a nonsmall business that provides for small business and microbusiness subcontractor participation, in solicitations where an award is to be made to the lowest responsible bidder or highest scored bidder meeting specifications.

Existing law also requires that in the event of a precise tie between the low responsible bid of a bidder meeting specifications of a small business or microbusiness, and the low responsible bid of a bidder meeting the specifications of a disabled veteran-owned small business or microbusiness, the contract be awarded to the disabled veteran-owned small business or microbusiness.

This bill would make technical, nonsubstantive changes to those provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 14838 of the Government Code is amended to read:

14838. In order to facilitate the participation of small business, including microbusiness, in the provision of goods, information technology, and services to the state, and in the construction ~~(including, including~~ alteration, demolition, repair, or ~~improvement)~~ *improvement* of state facilities, the directors of the department and other state agencies that enter those contracts, each within their respective areas of responsibility, shall do all of the following:

(a) Establish goals, consistent with those established by the Office of Small Business Certification and Resources, for the extent of participation of small businesses, including microbusinesses, in the provision of goods, information technology, and services to the state, and in the construction of state facilities.

(b) Provide for small business preference, or nonsmall business preference for bidders that provide for small business and microbusiness subcontractor participation, in the award of contracts for goods, information technology, services, and construction, as follows:

(1) In solicitations where an award is to be made to the lowest responsible bidder meeting specifications, the preference to small business and microbusiness shall be 5 percent of the lowest responsible bidder meeting specifications. The preference to nonsmall business bidders that provide for small business or microbusiness subcontractor participation shall be, up to a maximum of 5 percent of the lowest responsible bidder meeting specifications, determined according to rules and regulations established by the Department of General Services.

(2) In solicitations where an award is to be made to the highest scored bidder based on evaluation factors in addition to price, the preference to small business or microbusiness shall be 5 percent of the highest responsible bidder's total score. The preference to nonsmall business bidders that provide for small business or microbusiness subcontractor participation shall be up to a maximum 5 percent of the highest responsible bidder's total score, determined according to rules and regulations established by the Department of General Services.

1 (3) The preferences under paragraphs (1) and (2) shall not be
2 awarded to a noncompliant bidder and shall not be used to achieve
3 any applicable minimum requirements.

4 (4) The preference under paragraph (1) shall not exceed fifty
5 thousand dollars (\$50,000) for any bid, and the combined cost of
6 preferences granted pursuant to paragraph (1) and any other
7 ~~provision of~~ law shall not exceed one hundred thousand dollars
8 (\$100,000). In bids in which the state has reserved the right to
9 make multiple awards, this fifty thousand dollar (\$50,000)
10 maximum preference cost shall be applied, to the extent possible,
11 so as to maximize the dollar participation of small businesses,
12 including microbusinesses, in the contract award.

13 (c) Give special consideration to small businesses and
14 microbusinesses by both:

15 (1) Reducing the experience required.

16 (2) Reducing the level of inventory normally required.

17 (d) Give special assistance to small businesses and
18 microbusinesses in the preparation and submission of the
19 information requested in Section 14310.

20 (e) Under the authorization granted in Section 10163 of the
21 Public Contract Code, make awards, whenever feasible, to small
22 business and microbusiness bidders for each project bid upon
23 within their prequalification rating. This may be accomplished by
24 dividing major projects into subprojects so as to allow a small
25 business or microbusiness contractor to qualify to bid on these
26 subprojects.

27 (f) Small business and microbusiness bidders qualified in
28 accordance with this chapter shall have precedence over nonsmall
29 business bidders in that the application of ~~a~~ *any* bidder preference
30 for which nonsmall business bidders may be eligible under this
31 section or any other ~~provision of~~ law shall not result in the denial
32 of the award to a small business or microbusiness bidder. In the
33 event of a precise tie between the low responsible bid of a bidder
34 meeting specifications of a small business or microbusiness, and
35 the low responsible bid of a bidder meeting the specifications of
36 a disabled veteran-owned small business or microbusiness, the
37 contract shall be awarded to the disabled veteran-owned small
38 business or microbusiness. This ~~provision~~ *subdivision* applies if
39 the small business or microbusiness bidder is the lowest responsible
40 bidder, as well as if the small business or microbusiness bidder is

- 1 eligible for award as the result of application of the small business
- 2 and microbusiness bidder preference granted by subdivision (b).

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