

AMENDED IN ASSEMBLY MAY 6, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 2278

Introduced by Assembly Member Weber
(Coauthor: Assembly Member V. Manuel Pérez)

February 21, 2014

An act to amend ~~Section~~ *Sections 4535.2 and 14838* of the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2278, as amended, Weber. State agency contracts: small business.

Existing law, the Target Area Contract Preference Act, provides, except as specified, that the state shall award preferences to California-based companies submitting bids or proposals for state contracts who demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50 percent of the hours shall be accomplished at an identified worksite or worksites located in a distressed area by persons with a high risk of unemployment if the contract is for goods or services in excess of \$100,000. Existing law also provides that the maximum preference and incentive a bidder may be awarded pursuant to these provisions is \$50,000 for any bid, and \$100,000 for the combined cost of these preferences and incentives and those provided pursuant to any other provision of law.

This bill would instead provide that the maximum preference and incentive a bidder may be awarded pursuant to these provisions shall not exceed \$350,000 for any bid, and \$400,000 for the combined cost of these preferences and incentives and those provided pursuant to any other provision of law.

Existing law, the Small Business Procurement and Contract Act, provides for various programs to encourage the participation of small businesses, as certified by the Department of General Services, in state agency contracts, including a microbusiness and a disabled veteran business enterprise. Existing law requires directors of state agencies, in awarding prescribed contracts, to provide a 5% preference to small businesses and microbusinesses, and a preference of up to 5% to a nonsmall business that provides for small business or microbusiness subcontractor participation, not to exceed prescribed amounts. Existing law provides, in solicitations where an award is made to the lowest responsible bidder, that the preferences shall not exceed \$50,000 for any bid and that the combined cost of preferences granted shall not exceed \$100,000. Existing law provides that, in bids in which the state has reserved the right to make multiple awards, the \$50,000 maximum preference cost shall be applied.

This bill would provide, in solicitations where an award is made to the lowest responsible bidder, that the preference to small business and microbusiness be 5% of the lowest responsible nonsmall business bidder meeting specifications and that the preference to nonsmall business bidders that provide for small business or microbusiness subcontractor participation be up to a maximum of 5% of the lowest responsible nonsmall business bidder. This bill also would provide that the preference not exceed \$350,000 for any contract award and that the combined cost of preferences granted not exceed \$400,000. This bill would require that the \$350,000 maximum preference cost be applied in multiple contract awards.

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

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

1 SECTION 1. Section 4535.2 of the Government Code is
2 amended to read:
3 4535.2. (a) The maximum preference and incentive a bidder
4 may be awarded pursuant to this chapter and any other provision
5 of law shall be 15 percent. However, in no case shall the maximum
6 preference and incentive cost under this chapter exceed ~~fifty~~
7 ~~thousand dollars (\$50,000) three hundred fifty thousand dollars~~
8 (\$350,000) for any bid, nor shall the combined cost of preferences
9 and incentives granted pursuant to this chapter and any other

1 provision of law exceed ~~one hundred thousand dollars~~(\$100,000).
2 *four hundred thousand dollars (\$400,000)*. In those cases where
3 the 15-percent cumulated preference and incentive cost would
4 exceed the ~~one hundred thousand dollar~~ (\$100,000)
5 *four-hundred-thousand-dollar (\$400,000)* maximum preference
6 and incentive cost limit, the ~~one hundred thousand dollar~~
7 *(\$100,000) four-hundred-thousand-dollar (\$400,000)* maximum
8 preference and incentive cost limit shall apply.

9 (b) Notwithstanding the provisions of this chapter, small
10 business bidders qualified in accordance with Section 14838 shall
11 have precedence over nonsmall business bidders in that the
12 application of any bidder preference for which nonsmall business
13 bidders may be eligible, including the preference contained in this
14 chapter, shall not result in the denial of the award to a small
15 business bidder. This subdivision shall apply to those cases where
16 the small business bidder is the lowest responsible bidder, as well
17 as to those cases where the small business bidder is eligible for
18 award as the result of application of the 5-percent small business
19 bidder preference and incentive.

20 **SECTION 1.**

21 *SEC. 2.* Section 14838 of the Government Code is amended
22 to read:

23 14838. In order to facilitate the participation of small business,
24 including microbusiness, in the provision of goods, information
25 technology, and services to the state, and in the construction
26 (including alteration, demolition, repair, or improvement) of state
27 facilities, the directors of the department and other state agencies
28 that enter those contracts, each within their respective areas of
29 responsibility, shall do all of the following:

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

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

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

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

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

23 (4) The preference under paragraph (1) shall not exceed three
24 hundred fifty thousand dollars (\$350,000) for any contract award,
25 and the combined cost of preferences granted pursuant to paragraph
26 (1) and any other provision of law shall not exceed four hundred
27 thousand dollars (\$400,000). For contract awards in which the
28 state has reserved the right to make multiple awards, this three
29 hundred fifty thousand dollar (\$350,000) maximum preference
30 cost shall be applied, to the extent possible, so as to maximize the
31 dollar participation of small businesses, including microbusinesses,
32 in the contract award.

33 (c) Give special consideration to small businesses and
34 microbusinesses by both:

35 (1) Reducing the experience required.

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

37 (d) Give special assistance to small businesses and
38 microbusinesses in the preparation and submission of the
39 information requested in Section 14310.

1 (e) Under the authorization granted in Section 10163 of the
2 Public Contract Code, make awards, whenever feasible, to small
3 business and microbusiness bidders for each project bid upon
4 within their prequalification rating. This may be accomplished by
5 dividing major projects into subprojects so as to allow a small
6 business or microbusiness contractor to qualify to bid on these
7 subprojects.

8 (f) Small business and microbusiness bidders qualified in
9 accordance with this chapter shall have precedence over nonsmall
10 business bidders in that the application of a bidder preference for
11 which nonsmall business bidders may be eligible under this section
12 or any other provision of law shall not result in the denial of the
13 award to a small business or microbusiness bidder. In the event of
14 a precise tie between the low responsible bid of a bidder meeting
15 specifications of a small business or microbusiness, and the low
16 responsible bid of a bidder meeting the specifications of a disabled
17 veteran-owned small business or microbusiness, the contract shall
18 be awarded to the disabled veteran-owned small business or
19 microbusiness. This provision applies if the small business or
20 microbusiness bidder is the lowest responsible bidder, as well as
21 if the small business or microbusiness bidder is eligible for award
22 as the result of application of the small business and microbusiness
23 bidder preference granted by subdivision (b).