

ASSEMBLY BILL

No. 2905

Introduced by Committee on Jobs, Economic Development, and the Economy (Assembly Members Eduardo Garcia (Chair), Kim (Vice Chair), Brown, Chu, Gipson, and Mathis)

March 7, 2016

An act to amend Section 14838 of the Government Code, and to amend Section 10111 of the Public Contract Code, relating to public contracting.

LEGISLATIVE COUNSEL'S DIGEST

AB 2905, as introduced, Committee on Jobs, Economic Development, and the Economy. Public contracting: small business goal.

Existing law requires the Director of the Department of General Services and the directors of other state agencies to establish goals for the 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.

This bill would state the intent of the Legislature to set and implement a 25% small business participation goal for state procurement and contracting.

Existing law requires each state agency that was awarded any contract financed with the proceeds of the infrastructure-related bond acts of 2006 in the previous fiscal year to report to the Director of General Services statistics comparing the small business and microbusiness participation dollars for contracts funded by these bonds to the total contract dollars for contracts funded by the bonds.

This bill would require that the goals established by the agency director for the participation of small businesses, as described above, be reported to the director in that report.

Existing law requires the department to make available a report on contracting that contains information on the level of participation by small businesses in state contracting.

The bill would also require the goals established by the director for the participation of small businesses, as described above, to be included in that report. The bill would also require that, to the extent feasible, beginning in 2018, that specified information in the report about the participation of small businesses be provided by prime contractor and subcontractor, separately. The bill would define subcontractor and prime contractor for purposes of these provisions.

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. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) California’s dominance in many economic areas is based,
- 4 in part, on the significant role small businesses play in the state’s
- 5 \$2.3 trillion economy.
- 6 (2) Business owners with no employees make up the single
- 7 largest component of businesses in California, 2.8 million out of
- 8 an estimated 3.5 million businesses in 2010.
- 9 (3) Nearly 90 percent of all businesses with employees have
- 10 fewer than 20 employees, employing 37 percent of all workers in
- 11 2012.
- 12 (4) Research by the United States Census Bureau and the Ewing
- 13 Marion Kauffman Foundation confirm that job growth is greater
- 14 among businesses with fewer than 20 employees.
- 15 (5) California’s nonemployer and small employer firms create
- 16 jobs, generate tax revenue, and revitalize communities.
- 17 (b) It is the intent of the Legislature that the state set and
- 18 implement a 25 percent small business participation goal for state
- 19 procurement and contracting.
- 20 SEC. 2. Section 14838 of the Government Code is amended
- 21 to read:

1 14838. In order to facilitate the participation of small business,
2 including microbusiness, in the provision of goods, information
3 technology, and services to the state, and in the construction,
4 (including alteration, demolition, repair, or improvement), of state
5 facilities, the directors of the department and other state agencies
6 that enter those contracts, each within their respective areas of
7 responsibility, shall do all of the following:

8 (a) Establish goals, consistent with those established by the
9 Office of Small Business Certification and Resources, for the extent
10 of participation of small businesses, including microbusinesses,
11 in the provision of goods, information technology, and services to
12 the state, and in the construction of state facilities. *Each state*
13 *agency that is required to make a report to the Director of General*
14 *Services pursuant to subdivision (f) of Section 14838.1 shall include*
15 *the goals in its report. The director shall also include the goals in*
16 *the department report made pursuant to Section 10111 of the*
17 *Public Contract Code.*

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

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

32 (2) In solicitations where an award is to be made to the highest
33 scored bidder based on evaluation factors in addition to price, the
34 preference to small business or microbusiness shall be 5 percent
35 of the highest responsible bidder's total score. The preference to
36 nonsmall business bidders that provide for small business or
37 microbusiness subcontractor participation shall be up to a
38 maximum 5 percent of the highest responsible bidder's total score,
39 determined according to rules and regulations established by the
40 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 bidder preference for
30 which nonsmall business bidders may be eligible under this section
31 or any other provision of law shall not result in the denial of the
32 award to a small business or microbusiness bidder. In the event of
33 a precise tie between the low responsible bid of a bidder meeting
34 specifications of a small business or microbusiness, and the low
35 responsible bid of a bidder meeting the specifications of a disabled
36 veteran-owned small business or microbusiness, the contract shall
37 be awarded to the disabled veteran-owned small business or
38 microbusiness. This provision applies if the small business or
39 microbusiness bidder is the lowest responsible bidder, as well as
40 if the small business or microbusiness bidder is eligible for award

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

3 SEC. 3. Section 10111 of the Public Contract Code is amended
4 to read:

5 10111. Commencing January 1, 2007, the department shall
6 make available a report on contracting activity containing the
7 following information:

8 (a) A listing of consulting services contracts that the state has
9 entered into during the previous fiscal year. The listing shall
10 include the following:

11 (1) The name and identification number of each contractor.

12 (2) The type of bidding entered into, the number of bidders,
13 whether the low bidder was accepted, and if the low bidder was
14 not accepted, an explanation of why another contractor was
15 selected.

16 (3) The amount of the contract price.

17 (4) Whether the contract was a noncompetitive bid contract,
18 and why the contract was a noncompetitive bid contract.

19 (5) Justification for entering into each consulting services
20 contract.

21 (6) The purpose of the contract and the potential beneficiaries.

22 (7) The date when the initial contract was signed, and the date
23 when the work began and was completed.

24 (b) The report shall also include a separate listing of consultant
25 contracts completed during that fiscal year, with the same
26 information specified in subdivision (a).

27 (c) The information specified in subdivisions (a) and (b) shall
28 also include a list of any contracts underway during that fiscal year
29 on which a change was made regarding the following:

30 (1) The completion date of the contract.

31 (2) The amount of money to be received by the contractor, if it
32 exceeds 3 percent of the original contract price.

33 (3) The purpose of the contract or duties of the contractor. A
34 brief explanation shall be given if the change in purpose is
35 significant.

36 (d) The level of participation, by agency, of disabled veteran
37 business enterprises in statewide contracting and shall include
38 dollar values of contract award for the following categories:

39 (1) Construction.

40 (2) Architectural, engineering, and other professional services.

1 (3) Procurement of materials, supplies, and equipment.

2 (4) Information technology procurements.

3 Additionally, the report shall include a statistical summary
4 detailing each awarding department's goal achievement and a
5 statewide total of those goals.

6 (e) The level of participation by small business in state
7 contracting including:

8 (1) Upon request, an up-to-date list of eligible small business
9 bidders by general procurement and construction contract
10 categories, noting company names and addresses and also noting
11 which small businesses also qualify as microbusinesses.

12 (2) (A) By general procurement and construction contract
13 categories, statistics comparing the small business and
14 microbusiness contract participation dollars to the total state
15 contract participation dollars.

16 (B) *To the extent feasible, beginning in 2018, the information*
17 *required to be included pursuant to subparagraph (A) also shall*
18 *be provided by prime contractor and subcontractor, separately.*

19 (3) (A) By awarding department and general procurement and
20 construction categories, statistics comparing the small business
21 and microbusiness contract participation dollars to the total state
22 contract participation dollars.

23 (B) *To the extent feasible, beginning in 2018, the information*
24 *required to be included pursuant to subparagraph (A) also shall*
25 *be provided by prime contractor and subcontractor, separately.*

26 (4) Any recommendations for changes in statutes or state
27 policies to improve opportunities for small businesses and
28 microbusinesses.

29 (5) A statistical summary of small businesses and
30 microbusinesses certified for state contracting by the number of
31 employees at the business for each of the following categories:
32 ~~0-5, 6-20, 21-50, 51-75, and 76-100.~~ *6-20, 21-50, and 51 to 100.*

33 (6) To the extent feasible, beginning in the year 2008, the
34 number of contracts awarded by the department in the categories
35 specified in paragraph (5).

36 (7) The number of contracts and dollar amounts awarded
37 annually pursuant to Section 14838.5 of the Government Code to
38 small businesses, microbusinesses, and disabled veteran business
39 enterprises.

1 (f) The level of participation of business enterprises, by race,
2 ethnicity, and gender of the owner, in contracts to the extent that
3 the information has been voluntarily reported to the department.
4 In addition, the report shall contain the levels of participation of
5 business enterprises, by race, ethnicity, and gender of the owner,
6 and whether the business is a lesbian, gay, bisexual, or transgender
7 owned business for the following categories of contracts, to the
8 extent that the information has been voluntarily reported to the
9 department:

10 (1) Construction.

11 (2) Purchases of materials, supplies, or equipment.

12 (3) Professional services.

13 ~~(g) In the years 2011 and 2012, any errors reported to the~~
14 ~~department by an awarding agency as required by Sections 10302,~~
15 ~~10344, and 12104.5, in the previous fiscal year.~~

16 *(g) For purposes of this section, “subcontractor” and “prime*
17 *contractor” shall have the same meaning as those terms are*
18 *defined in Section 4113.*

19 (h) The amendments made to this section by ~~the act adding this~~
20 ~~subdivision Chapter 861 of the Statutes of 2012~~ shall apply on and
21 after January 1, 2013.