

AMENDED IN ASSEMBLY APRIL 12, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

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 amended, 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~~, *require*, to the extent feasible, ~~beginning in 2018, with the report issued in 2018 covering contracting activity in the 2017–18 fiscal year~~, 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. *The bill would also revise the categories, defined by the number of employees, by which a statistical summary relating to small and microbusinesses is required to be reported, and, to the extent feasible, beginning with the report issued in 2018 covering contracting activity in the 2017–18 fiscal year, the number of contracts awarded by the department in those categories.*

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.

1 (5) California’s nonemployer and small employer firms create
2 jobs, generate tax revenue, and revitalize communities.

3 (b) It is the intent of the Legislature that the state set and
4 implement a 25 percent small business participation goal for state
5 procurement and contracting.

6 SEC. 2. Section 14838 of the Government Code is amended
7 to read:

8 14838. In order to facilitate the participation of small business,
9 including microbusiness, in the provision of goods, information
10 technology, and services to the state, and in the construction,
11 including alteration, demolition, repair, or improvement, of state
12 facilities, the directors of the department and other state agencies
13 that enter those contracts, each within their respective areas of
14 responsibility, shall do all of the following:

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

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

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

39 (2) In solicitations where an award is to be made to the highest
40 scored bidder based on evaluation factors in addition to price, the

1 preference to small business or microbusiness shall be 5 percent
2 of the highest responsible bidder's total score. The preference to
3 nonsmall business bidders that provide for small business or
4 microbusiness subcontractor participation shall be up to a
5 maximum 5 percent of the highest responsible bidder's total score,
6 determined according to rules and regulations established by the
7 Department of General Services.

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

11 (4) The preference under paragraph (1) shall not exceed fifty
12 thousand dollars (\$50,000) for any bid, and the combined cost of
13 preferences granted pursuant to paragraph (1) and any other
14 provision of law shall not exceed one hundred thousand dollars
15 (\$100,000). In bids in which the state has reserved the right to
16 make multiple awards, this fifty thousand dollar (\$50,000)
17 maximum preference cost shall be applied, to the extent possible,
18 so as to maximize the dollar participation of small businesses,
19 including microbusinesses, in the contract award.

20 (c) Give special consideration to small businesses and
21 microbusinesses by both:

22 (1) Reducing the experience required.

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

24 (d) Give special assistance to small businesses and
25 microbusinesses in the preparation and submission of the
26 information requested in Section 14310.

27 (e) Under the authorization granted in Section 10163 of the
28 Public Contract Code, make awards, whenever feasible, to small
29 business and microbusiness bidders for each project bid upon
30 within their prequalification rating. This may be accomplished by
31 dividing major projects into subprojects so as to allow a small
32 business or microbusiness contractor to qualify to bid on these
33 subprojects.

34 (f) Small business and microbusiness bidders qualified in
35 accordance with this chapter shall have precedence over nonsmall
36 business bidders in that the application of a bidder preference for
37 which nonsmall business bidders may be eligible under this section
38 or any other provision of law shall not result in the denial of the
39 award to a small business or microbusiness bidder. In the event of
40 a precise tie between the low responsible bid of a bidder meeting

1 specifications of a small business or microbusiness, and the low
2 responsible bid of a bidder meeting the specifications of a disabled
3 veteran-owned small business or microbusiness, the contract shall
4 be awarded to the disabled veteran-owned small business or
5 microbusiness. This provision applies if the small business or
6 microbusiness bidder is the lowest responsible bidder, as well as
7 if the small business or microbusiness bidder is eligible for award
8 as the result of application of the small business and microbusiness
9 bidder preference granted by subdivision (b).

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

12 10111. Commencing January 1, 2007, the department shall
13 make available a report on contracting activity containing the
14 following information:

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

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

19 (2) The type of bidding entered into, the number of bidders,
20 whether the low bidder was accepted, and if the low bidder was
21 not accepted, an explanation of why another contractor was
22 selected.

23 (3) The amount of the contract price.

24 (4) Whether the contract was a noncompetitive bid contract,
25 and why the contract was a noncompetitive bid contract.

26 (5) Justification for entering into each consulting services
27 contract.

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

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

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

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

37 (1) The completion date of the contract.

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

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

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

- 7 (1) Construction.
- 8 (2) Architectural, engineering, and other professional services.
- 9 (3) Procurement of materials, supplies, and equipment.
- 10 (4) Information technology procurements.

11 Additionally, the report shall include a statistical summary
12 detailing each awarding department’s goal achievement and a
13 statewide total of those goals.

14 (e) The level of participation by small business in state
15 contracting including:

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

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

24 (B) To the extent feasible, ~~beginning in 2018~~, *with the report*
25 *issued in 2018 covering contracting activity in the 2017–18 fiscal*
26 *year*, the information required to be included pursuant to
27 subparagraph (A) also shall be provided by prime contractor and
28 subcontractor, separately.

29 (3) (A) By awarding department and general procurement and
30 construction categories, statistics comparing the small business
31 and microbusiness contract participation dollars to the total state
32 contract participation dollars.

33 (B) To the extent feasible, ~~beginning in 2018~~, *with the report*
34 *issued in 2018 covering contracting activity in the 2017–18 fiscal*
35 *year*, the information required to be included pursuant to
36 subparagraph (A) also shall be provided by prime contractor and
37 subcontractor, separately.

38 (4) Any recommendations for changes in statutes or state
39 policies to improve opportunities for small businesses and
40 microbusinesses.

1 (5) A statistical summary of small businesses and
2 microbusinesses certified for state contracting by the number of
3 employees at the business for each of the following categories:
4 0–5, ~~6–20, 21–50, and 51~~ 0–20, and 21 to 100.

5 (6) To the extent feasible, ~~beginning in the year 2008, with the~~
6 *report issued in 2018 covering contracting activity in the 2017–18*
7 *fiscal year*, the number of contracts awarded by the department in
8 the categories specified in paragraph (5).

9 (7) The number of contracts and dollar amounts awarded
10 annually pursuant to Section 14838.5 of the Government Code to
11 small businesses, microbusinesses, and disabled veteran business
12 enterprises.

13 (f) The level of participation of business enterprises, by race,
14 ethnicity, and gender of the owner, in contracts to the extent that
15 the information has been voluntarily reported to the department.
16 In addition, the report shall contain the levels of participation of
17 business enterprises, by race, ethnicity, and gender of the owner,
18 and whether the business is a lesbian, gay, bisexual, or transgender
19 owned business for the following categories of contracts, to the
20 extent that the information has been voluntarily reported to the
21 department:

22 (1) Construction.

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

24 (3) Professional services.

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

28 (h) The amendments made to this section by Chapter 861 of the
29 Statutes of 2012 shall apply on and after January 1, 2013.