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AMENDED IN SENATE AUGUST 6, 1998
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AMENDED IN ASSEMBLY MAY 22, 1998
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CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 2505

Introduced by Assembly Members Olberg and Machado
(Principal coauthor: Senator Kopp)

February 20, 1998

An act to amend ~~Sections 14837 and 14838 of the Government Code, relating to small business. Section 14837 of the Government Code, and to amend Sections 10290 and 12101.5 of, and to repeal and add Section 10298 of, the Public Contract Code, relating to state contracts.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2505, as amended, Olberg. ~~Small-business incentives State contracts.~~

(1) The Small Business Procurement and Contract Act requires the Director of General Services and the directors of other state agencies to perform various activities to assist small businesses to participate in state contracts. "Small business" is defined for these purposes as a business in which the principal office is located in California and the officers of the business are domiciled in California, which is independently owned

and operated, and which is not dominant in its field of operation. The director is authorized to use various criteria in making a detailed definition under these provisions.

This bill would additionally specify that a “small business,” within this definition, has 100 or fewer employees, and average annual gross receipts of \$10,000,000 or less over the previous three years *or is a manufacturer, as defined*. It would delete the requirement that a small business not be dominant in its field of operation, but would require that standards adopted by the director preclude the qualification of businesses that are dominant in their industry. It would include manufacturers, as defined, within this definition of “small business,” revise the criteria to be used by the director in defining that term, and require that standards applied in the definition be adopted by regulation.

The bill would provide that the definition of “small business” contained in the Small Business Procurement and Contract Act shall apply for purposes of an unspecified provision of law.

(2) Existing law authorizes state agencies to utilize multiple awards, including federal General Service Administration Multiple Awards Schedules, in procurements for commodities, electronic data processing and telecommunications goods, master services agreements for electronic data processing personal services, master agreements for equipment, and master equipment services agreements.

This bill would include services generally, electronic data processing and telecommunications services, and master services agreements within this authorization. It would additionally authorize the Director of General Services to consolidate the needs of multiple state agencies on commonly used goods, services, and information technology, and to establish contracts for specified types of acquisitions. It would authorize state agencies to place orders from these contracts without further competitive bidding, and would authorize the director to make the services of the department available, upon the terms and conditions deemed satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the authorized acquisitions.



(3) Existing law specifies that the provisions of law governing the approval of specified state contracts by the Department of General Services do not apply to specified types of services and consulting services contracts.

This bill would repeal that provision.

~~(2) The Small Business Procurement and Contract Act requires that with respect to state agencies that contract for the construction of state facilities, or for the delivery of services, the Director of General Services and the heads of the other agencies shall establish goals, consistent with those established by the Office of Small and Minority Business, for the extent of participation of small businesses in state procurement, construction contracts, and service contracts. State agencies are also required to provide for a small business preference in these contracts where responsibility and quality are equal, according to specified formulas.~~

This bill instead would require the state agencies to establish goals, consistent with those established by the Department of General Services, for small business participation in acquisitions, including, but not limited to, construction, goods, and services and information technology contracts. It would require state agencies to provide for incentives to small businesses, and, until January 1, 2003, in the case of contracts entered into by the Department of General Services, to nonsmall businesses that provide for small business subcontractor participation, according to specified formulas.

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 14837 of the Government Code
- 2 is amended to read:
- 3 14837. As used in this chapter:
- 4 (a) "Department" means the Department of General
- 5 Services.
- 6 (b) "Director" means the Director of General
- 7 Services.



1 (c) “Manufacturer” means a business that is both of
2 the following:

3 (1) Primarily engaged in the chemical or mechanical
4 transformation of raw materials or processed substances
5 into new products.

6 (2) Classified between Codes 2000 to 3999, inclusive, of
7 the Standard Industrial Classification (SIC) Manual
8 published by the United States Office of Management
9 and Budget, 1987 edition.

10 (d) (1) “Small business” means an independently
11 owned and operated business, ~~or manufacturer, as~~
12 ~~defined in subdivision (e)~~; the principal office of which is
13 located in California, the officers of which are domiciled
14 in California, and which, together with affiliates, has 100
15 or fewer employees, and average annual gross receipts of
16 ten million dollars (\$10,000,000) or less over the previous
17 three years, *or is a manufacturer, as defined in subdivision*
18 *(c)*.

19 (2) The director shall conduct a biennial review of the
20 average annual gross receipt level specified in this
21 subdivision and may adjust that level to reflect changes
22 in the California Consumer Price Index for all items. To
23 reflect unique variations or characteristics of different
24 industries, the director may establish, to the extent
25 necessary, higher qualifying standards than those
26 specified in this subdivision, or alternative standards
27 based on other applicable criteria.

28 (3) Standards applied under this subdivision shall be
29 established by regulation, in accordance with Chapter 3.5
30 (commencing with Section 11340) of Part 1, and shall
31 preclude the qualification of businesses that are dominant
32 in their industry.

33 ~~SEC. 2.—Section 14838 of the Government Code is~~

34 *SEC. 2. Section 10290 of the Public Contract Code is*
35 *amended to read:*

36 10290. As used in this chapter:

37 (a) “Department” means the Department of General
38 Services.

39 (b) “Director” means the Director of General
40 Services.



1 (c) “Centralized purchasing” means the purchase for
2 state agencies of materials, supplies, and equipment by
3 the Office of Procurement.

4 (d) “Office” means the Office of Procurement in the
5 Department of General Services.

6 (e) “Price schedule” means an agreement between
7 the Office of Procurement and a vendor under which the
8 vendor agrees to accept orders from the office or a state
9 agency for a commodity or commodities at set prices for
10 a specified period of time but which does not obligate the
11 office or state agencies to purchase the commodity or
12 commodities from the vendor.

13 (f) “Regional commodities contract” means a
14 commodities contract of the same type as a statewide
15 commodities contract but applicable only to purchases in
16 a particular area or region of the state.

17 (g) “Statewide commodities contract” means a
18 contract awarded by the Office of Procurement to a
19 vendor or vendors for the purchase of a commodity or
20 commodities for a period of time, at a price, and in an
21 amount set forth in the contract.

22 (h) “Multiple award” means a contract of indefinite
23 quantity for one or more similar goods *or services* to more
24 than one vendor.

25 (i) “Multiple award schedule” (MAS) is an agreement
26 established between the General Services Administration
27 of the United States and certain vendors to do business
28 under specific prices, terms, and conditions for specified
29 goods and services.

30 *SEC. 3. Section 10298 of the Public Contract Code is*
31 *repealed.*

32 ~~10298. The provisions of this article shall not apply to~~
33 ~~contracts covered under Article 4 (commencing with~~
34 ~~Section 10335) or 5 (commencing with Section 10355).~~

35 *SEC. 4. Section 10298 is added to the Public Contract*
36 *Code, to read:*

37 *10298. (a) The director may consolidate the needs of*
38 *multiple state agencies on commonly used goods,*
39 *services, and information technology, and establish*
40 *contracts for acquisitions authorized under this chapter*



1 and Chapter 3 (commencing with Section 12100). These
2 contracts may be awarded for acquisitions pursuant to
3 Section 12100.7. State agencies may place orders from
4 these contracts without further competitive bidding.

5 (b) The director may make the services of the
6 department available, upon the terms and conditions
7 deemed satisfactory, to any tax-supported public agency
8 in the state, including a school district, for assisting the
9 agency in acquisitions authorized under this chapter and
10 Chapter 3 (commencing with Section 12100).

11 (c) This section is not intended, and shall not be
12 construed, to extend or limit the authority specified in
13 Section 19130 of the Government Code.

14 SEC. 5. Section 12101.5 of the Public Contract Code
15 is amended to read:

16 12101.5. (a) It is the intent of the Legislature that
17 agencies of the State of California utilize an acquisition
18 method that is compatible with their short- and long-term
19 fiscal needs in contracts relating to commodities, *services*,
20 and electronic data processing and telecommunications
21 goods and services. State agencies should be able to
22 specify their anticipated life cycle requirements that
23 would become one of the criteria for procurement
24 selection. These agencies should be given the choice of
25 vendors to meet statewide standardization needs, unique
26 service requirements, application requirements, and
27 long-term satisfaction criteria. There is a need for the
28 State of California to enter into long-term contracts with
29 annual cancellation and fund out clauses, as required, to
30 protect the state's interests as well as provide the option
31 for multiyear renewals to encourage vendors to develop
32 higher levels of service and support throughout the
33 contracts.

34 (b) The state may utilize multiple awards including
35 federal General Service Administration Multiple Awards
36 Schedules in procurements for commodities, *services*,
37 and electronic data processing and telecommunications
38 goods *and services*; master services agreements for
39 electronic data processing personal services; master
40 agreements for equipment; *master services agreements*;



1 and master equipment services agreements. For
2 purposes of this subdivision, a multiple award is an award
3 of an indefinite quantity contract for one or more similar
4 goods *or services* to more than one vendor. Except for
5 possible multiple awards as permitted by this subdivision,
6 all the requirements of this chapter pertaining to other
7 types of electronic data processing and
8 telecommunications procurements shall be followed. The
9 Department of General Services shall ensure that
10 multiple award schedules are in compliance with all other
11 applicable statutes.

12 (c) Notwithstanding any other provision of law, state
13 agencies, in exercising their delegation of procurement
14 authority from the Department of General Services, may
15 make awards to vendors who have multiple award
16 schedules with the General Services Administration of
17 the United States on the same terms, conditions, and
18 prices if the vendor is willing to do so. The department
19 may also develop multiple award agreements for use by
20 state agencies in the same manner. The Department of
21 General Services shall determine the delegation
22 procurement authority for agencies wishing to use
23 multiple award schedules pursuant to the State
24 Administrative Manual.

25 *(d) This section is not intended, and shall not be*
26 *construed, to extend or limit the authority specified in*
27 *Section 19130 of the Government Code.*

28 ~~amended to read:~~

29 ~~14838. In order to facilitate the participation of small~~
30 ~~business in state agency acquisitions, including, but not~~
31 ~~limited to, construction, goods, and services contracts,~~
32 ~~under the office of the State Architect or other state~~
33 ~~agencies that contract for the construction, including~~
34 ~~alteration, demolition, repair, or improvement, of state~~
35 ~~facilities, or the delivery of services, the directors of~~
36 ~~General Services and of the other agencies, each within~~
37 ~~their respective areas of responsibility, shall do all of the~~
38 ~~following:~~

39 ~~(a) Establish goals, consistent with those established~~
40 ~~by the Department of General Services, for small business~~



1 ~~participation in acquisitions, including, but not limited to,~~
2 ~~construction, goods, and services and information~~
3 ~~technology contracts.~~

4 ~~(b) (1) Provide for a small business incentive in~~
5 ~~contracts for construction, the acquisition of goods or~~
6 ~~information technology, or the delivery of services.~~

7 ~~(2) The incentive to small business shall be 5 percent~~
8 ~~of the lowest responsible bidder meeting specifications.~~
9 ~~In solicitations where factors other than price are~~
10 ~~considered for purposes of deciding awards, the~~
11 ~~5-percent incentive shall apply to each of those factors or~~
12 ~~criteria, except that it shall not be used to achieve~~
13 ~~minimum requirements, if any. However, the small~~
14 ~~business incentive shall not exceed fifty thousand dollars~~
15 ~~(\$50,000), or 5 percent of the evaluation factors or criteria~~
16 ~~for any bid. In bids in which the state has reserved the~~
17 ~~right to make multiple awards, this fifty thousand dollar~~
18 ~~(\$50,000) maximum incentive cost shall be applied, to the~~
19 ~~extent possible, so as to maximize the dollar participation~~
20 ~~of small businesses in the contract award.~~

21 ~~(3) (A) In the case of contracts for the construction of~~
22 ~~state facilities or the delivery of goods, services, or~~
23 ~~information technology that are entered into by the~~
24 ~~Department of General Services, there shall be an~~
25 ~~incentive for nonsmall businesses, known as the Business~~
26 ~~Incentive Partnership Program, that provides for small~~
27 ~~business subcontractor participation, which shall be~~
28 ~~based upon the level of small business participation in~~
29 ~~proportion to the total amount of the contract, up to a~~
30 ~~minimum 5-percent incentive, as follows:~~

32 Level of Small Business	Partnership Incentive
33 Subcontractor Participation	Percentage
34 Less than 3%	0%
35 3% to 9.99%	1%
36 10% to 19.99%	2%
37 20% to 29.99%	3%
38 30% to 39.99%	4%
39 40% or more	5%

40



1 The Business Incentive Partnership Program shall
2 apply to solicitations where the award will be made to the
3 lowest responsible bidder meeting specifications, as well
4 as to each of the specific factors or criteria considered by
5 the state agency in solicitations where multiple factors or
6 criteria are considered for purposes of deciding awards,
7 except that it shall not be used to achieve minimum
8 requirements, if any. However, the Business Incentive
9 Partnership Program shall not exceed fifty thousand
10 dollars (\$50,000), or 5 percent of the evaluation factors or
11 criteria, for any bid. In bids in which the state has
12 reserved the right to make multiple awards, this fifty
13 thousand dollar (\$50,000) maximum incentive cost shall
14 be applied, to the extent possible, so as to maximize the
15 dollar participation of small businesses in the contract
16 award.

17 (B) The Business Incentive Partnership Program
18 implemented pursuant to this paragraph shall be
19 operative only until January 1, 2003.

20 (4) The combined cost of incentives or preferences
21 granted pursuant to this chapter and any other provision
22 of law shall not exceed one hundred thousand dollars
23 (\$100,000).

24 (e) Give special consideration to small businesses by
25 doing both of the following:

26 (1) Reducing the experience required.

27 (2) Reducing the level of inventory normally
28 required.

29 (d) Give special assistance to small businesses in their
30 preparation and submission of the information requested
31 in Section 14310.

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

39 (f) Small business bidders qualified in accordance with
40 the provisions of this chapter shall have precedence over



1 ~~nonsmall business bidders in that the application of any~~
2 ~~bidder preference for which nonsmall business bidders~~
3 ~~may be eligible under any other provision of law shall not~~
4 ~~result in the denial of the award to a small business bidder.~~
5 ~~In furtherance of law pertaining to California's disabled~~
6 ~~veterans, in the event of a precise tie between the low~~
7 ~~responsible bid of a bidder meeting specifications of a~~
8 ~~small business, and the low responsible bid of a bidder~~
9 ~~meeting the specifications of a disabled veteran-owned~~
10 ~~small business, the contract shall be awarded to the~~
11 ~~disabled veteran-owned small business. This provision~~
12 ~~shall apply to those cases where the small business bidder~~
13 ~~is the lowest responsible bidder, as well as to those cases~~
14 ~~where the small business bidder is eligible for award as~~
15 ~~the result of application of the 5-percent small business~~
16 ~~bidder incentive granted by subdivision (b).~~

