AMENDED IN ASSEMBLY APRIL 26, 2012

AMENDED IN ASSEMBLY APRIL 10, 2012

california legislature—2011–12 regular session

ASSEMBLY BILL No. 2672

Introduced by Committee on Jobs, Economic Development, and the Economy (Assembly Members V. Manuel Pérez (Chair), Beall, Block, and Hueso)

March 5, 2012

An act to amend Sections 7084 and 7118 of the Government Code, and to amend Section 10349 of the Public Contract Code, relating to economic development.

legislative counsel's digest

AB 2672, as amended, Committee on Jobs, Economic Development, and the Economy. Procurement omnibus bill.

(1) Existing law requires the state to provide bidding preferences, as specified, to companies meeting specified requirements and making specified declarations related to work within an enterprise zone or a local agency military base recovery area.

This bill would require each awarding department to submit a report every January 1 to the Department of General Services on the number of businesses that claim enterprise zone preferences *and local agency military base recovery area preferences*, as specified. The bill would require the Department of General Services to report to the Department of Housing and Community Development on the number of businesses that claim enterprise zone preferences *and local agency military base recovery area preferences*, as specified.

(2) Existing law requires the Department of Personnel Administration to establish a program for training state agency contracting personnel in contract administration and contract management.

This bill would require the training program to address certain requirements, as specified, including, but not limited to, small business preferences, disabled veteran-owned business preferences, *local agency military base recovery area preferences,* and enterprise zone preferences.

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

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

SECTION 1. Section 7084 of the Government Code is amended to read:

7084. (a) Whenever the state prepares a solicitation for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies that 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 an enterprise zone.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies that demonstrate and certify under penalty of perjury that not less than 90 percent of the labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in an enterprise zone.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who certify under penalty of perjury to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 5 to 9 percent of its workforce during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 10 to 14 percent of its workforce during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 15 to 19 percent of its workforce during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 20 or more percent of its workforce during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other law shall be 15 percent. However, in no case shall the maximum preference cost under this section exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other law exceed one hundred thousand dollars ($100,000). In those cases where the 15-percent cumulated preference cost would exceed the one hundred thousand dollar ($100,000) maximum preference cost limit, the one hundred thousand dollar ($100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified under Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder incentive.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a) or (b) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to directly or indirectly transact any business with the state for a period of not less than six months and not more than 36 months.

(2) Before the imposition of any sanction under this subdivision, the business shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(h) In each instance in this section an enterprise zone shall also mean any enterprise zone or program area previously authorized under any other state law.

(i) As used in this section, "enterprise zone eligible employees" means employees who meet any of the requirements of clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.74, or clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 23622.5, of the Revenue and Taxation Code.

(j) Commencing on January 1, 2013, and on January 1 of each year thereafter, each awarding department shall submit a report to the Department of General Services on the number of businesses that claim enterprise zone preferences as identified in this section.

(k) Commencing on January 1, 2013, and on January 1 of each year thereafter, the Department of General Services shall report to the Department of Housing and Community Development on the number of businesses that claim enterprise zone preferences as identified in this section.

SEC. 2. Section 7118 of the Government Code is amended to read:

7118. (a) Whenever the state prepares a solicitation for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies 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 local agency military base recovery area.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies who demonstrate and certify under penalty of perjury that not less than 90 percent of the labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in a local agency military base recovery area.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who certify under penalty of perjury to hire persons living within a local agency military base recovery area equal to 5 to 9 percent of its workforce during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 10 to 14 percent of its workforce during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 15 to 19 percent of its workforce during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 20 or more percent of its workforce during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other law shall be 15 percent. However, in no case shall the maximum preference cost under this section exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other law exceed one hundred thousand dollars ($100,000). In those cases where the 15-percent cumulated preference cost would exceed the one hundred thousand dollar ($100,000) maximum preference cost limit, the one hundred thousand dollar ($100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified under Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a) or (b) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to directly or indirectly transact any business with the state for a period of not less than six months and not more than 36 months.

(2) Before the imposition of any sanction under this subdivision, the business shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(h) In each instance in this section, a local agency military base recovery area shall also mean any local agency military base recovery area previously authorized under any other state law.

(i) Commencing on January 1, 2013, and on January 1 of each year thereafter, each awarding department shall submit a report to the Department of General Services on the number of businesses that claim ~~enterprise zone~~ *local agency military base recovery area* preferences as identified in this section.

(j) Commencing on January 1, 2013, and on January 1 of each year thereafter, the Department of General Services shall report to the Department of Housing and Community Development on the number of businesses that claim ~~enterprise zone~~ *local agency military base recovery area* preferences as identified in this section.

SEC. 3. Section 10349 of the Public Contract Code is amended to read:

10349. (a) The Department of Personnel Administration shall establish a program for training state agency contracting personnel in contract administration and contract management. The cost of training state agency contracting personnel shall be paid by state agencies out of their appropriations for personnel training. The Department of Personnel Administration shall, before establishing the training program required by this section, consult with the department concerning the training curriculum and the development of a training manual on contract administration.

(b) The training program shall address the requirements in existing law relating to state contract administration and management, including, but not limited to, small business preferences, disabled veteran-owned business preferences, *local agency military base recovery area preferences*, and enterprise zone preferences.

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