ASSEMBLY BILL No. 2278

Introduced by Assembly Member Weber

February 21, 2014

An act to amend Section 14838 of the Government Code, relating to public contracts.

legislative counsel's digest

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

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:

SECTION 1. Section 14838 of the Government Code is amended to read:

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

(a) Establish goals, consistent with those established by the Office of Small Business Certification and Resources, for the extent of 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.

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

(1) In solicitations where an award is to be made to the lowest responsible bidder meeting specifications, the preference to small business and microbusiness shall be 5 percent of the lowest responsible *nonsmall business* bidder meeting specifications. The preference to nonsmall business bidders that provide for small business or microbusiness subcontractor participation shall be, up to a maximum of 5 percent of the lowest responsible *nonsmall business* bidder meeting specifications, determined according to

rules and regulations established by the Department of General Services.

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

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

(4) The preference under paragraph (1) shall not exceed *three hundred* fifty thousand dollars ~~($50,000)~~ *($350,000)* for any ~~bid~~ *contract award*, and the combined cost of preferences granted pursuant to paragraph (1) and any other provision of law shall not exceed ~~one~~ *four* hundred thousand dollars ~~($100,000)~~ *($400,000)*. ~~In bids~~ *For contract awards* in which the state has reserved the right to make multiple awards, this *three hundred* fifty thousand dollar ~~($50,000)~~ *($350,000)* maximum preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of small businesses, including microbusinesses, in the contract award.

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

(1) Reducing the experience required.

(2) Reducing the level of inventory normally required.

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

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

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

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