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THIRD READING

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Bill No: AB 2019  
Author: Petrie-Norris (D) and Holden (D), et al.  
Amended: 8/11/22 in Senate  
Vote: 21

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SENATE GOVERNMENTAL ORG. COMMITTEE: 12-0, 6/14/22  
AYES: Dodd, Nielsen, Allen, Becker, Borgeas, Bradford, Hertzberg, Hueso,  
Kamlager, Portantino, Roth, Wilk  
NO VOTE RECORDED: Glazer, Jones, Melendez

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 11-0, 6/27/22  
AYES: Roth, Melendez, Archuleta, Becker, Dodd, Eggman, Hurtado, Leyva, Min,  
Newman, Pan  
NO VOTE RECORDED: Bates, Jones, Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-0, 8/11/22  
AYES: Portantino, Bradford, Laird, McGuire, Wieckowski  
NO VOTE RECORDED: Bates, Jones

ASSEMBLY FLOOR: 76-0, 5/25/22 - See last page for vote

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**SUBJECT:** Small and disadvantaged business enterprises

**SOURCE:** California Asian Pacific Chamber of Commerce

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**DIGEST:** This bill codifies, among other things, a 25% small business goal for state procurement and proposes a number of actions to enhance the ability and commitment of state agencies to include small business, including microbusinesses in state contracting, as specified.

**ANALYSIS:**

## Existing law:

- 1) Designates the Department of General Services (DGS) as the administrator of the state Small Business Procurement and Contract Act (Act), which includes certifying and implementing targeted preference programs for certified SBs microbusinesses, and DVBEs.
- 2) Requires DGS, and the heads of other state agencies that enter into contracts for the acquisition of goods, services, and information technology and for the construction of state facilities to establish goals for the participation of small businesses and microbusinesses in these contracts, to provide for a small business preference in the award of these contracts, to give special consideration and special assistance to small businesses, and, whenever possible, to make awards to small businesses, as specified.
- 3) Establishes the DVBE Program within DGS and tasks the program with establishing a uniform process for state contracting that would provide a DVBE participation incentive to bidders.
- 4) Requires each state agency that significantly regulates or impacts small business to designate at least one person to serve as a small business liaison for the agency. The small business liaison is responsible for, among other things, receiving and responding to complaints received by the agency from small businesses and assisting in ensuring that the procurement and contracting processes of the entity are administered in order to meet or exceed the goal of 25% small business participation.
- 5) Establishes the Office of Small Business Advocate (Advocate) within the Governor's Office of Business and Economic Development (GO-Biz). The Advocate is required to prepare and submit a written annual report to the Governor and the Legislature that describes the activities and recommendations of the office, including an evaluation of the efforts of state agencies and, where appropriate, specific departments, that significantly regulate small businesses to assist minority and other small business enterprises, and make appropriate recommendations to assist the development of these enterprises.

- 6) Requires the Advocate to post certain information on GO-Biz or the Advocate's internet website, including how to receive assistance in certifying as a small business and identifying and participating in state procurement opportunities.
- 7) Defines a "small business" to mean an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with its affiliates, 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 with 100 or fewer employees and less than \$15,000,000 average annual gross receipts, as specified.
- 8) Defines a "microbusiness" as a small business which, together with affiliates, has average annual gross receipts of \$5 million, as may be adjusted to reflect changes in the California Consumer Price Index, or less over the previous three years.
- 9) Requires DGS to conduct a biennial review of those average annual gross receipt levels and authorizes DGS to adjust the average annual gross receipts threshold to reflect those changes in the California Consumer Price Index, as specified.
- 10) Requires DGS and other state agencies that enter into contracts concerning the provisions of goods, information technology, services, and construction of state facilities, to establish goals for the extent of participation of small business, including microbusinesses, for those contracts.
- 11) Requires DGS and other state agencies that enter into contracts for the provision of goods, information technology, services to the state, and construction of state facilities, to provide for a small business preference, in the award of contracts, in solicitations where an award is to be made to the lowest responsible bidder meeting specifications, with the amount being five percent of the lowest responsible bidder meeting those specifications.
- 12) Authorizes a state agency to award a contract for construction or other state improvement of any kind with an estimated value of greater than \$5,000 but less than a specified amount, to a certified small business or to a DVBE so long as the agency obtains written bid submittals from two or more certified small businesses or DVBEs.

- 13) Establishes the Office of Small Business and DVBE Services within DGS and charges it with specified duties, including making recommendations to DGS and other state agencies for simplification of specifications and terms in order to increase the opportunities for small business, microbusiness, and DVBE participation.
- 14) Requires DGS, during the process of certifying and determining the eligibility of a small business or a DVBE, to require the applicant or certified firm to submit a written declaration, under penalty of perjury, that the information submitted to the department pursuant to specified law is true and correct.

This bill:

- 1) Requires the small business liaison to develop an “economic equity first” action plan and policy for the agency, which will provide, among other things, direction, recommendations, and strategies as to how best to ensure that small businesses, including women-owned, minority-owned, and LGBTQ-owned businesses, are effectively involved in, and benefitting from, the procurement process of the agency.
- 2) Requires the action plan and policy to be adopted by January 1, 2024 and include, as part of a general outreach effort to all small businesses, education, outreach, and stakeholder engagement with representative business organizations and business enterprises owned by women, minorities, and members of the LGBTQ community.
- 3) Requires an annual report currently required to be submitted by the Advocate to the Governor’s Office and the Legislature to also include details regarding the office’s activities to support procurement participation by small businesses, microbusiness, and DVBEs, and businesses owned by women, minorities, or members of the LGBTQ community, as specify.
- 4) Requires that specified information that the Advocate is currently required to post on the Advocate’s internet website, and also information in receiving assistance in certifying as a DVBE, to be easily accessible from the homepage of the GO-Biz internet website.
- 5) Adds language to the Act that would declare that the state economy is strengthened by the diversity and resiliency of its small businesses and it is essential to ensure small businesses are able to fully participate in the domestic

and global markets, including, but not limited to, businesses owned by women, disabled individuals, people who identify as LGBT, immigrants, and socially and economically disadvantaged individuals.

- 6) Requires the Director of DGS to communicate and coordinate with the Advocate on the execution of a biennial review that the director is currently required to conduct to possibly adjust the average annual gross receipt for the annual gross receipts for an SB or microbusiness.
- 7) Requires the heads of state agencies that enter into contracts concerning the provisions of goods, information technology, services, and construction of state facilities, to establish a minimum goal of 25% procurement participation for small business, including microbusinesses.
- 8) Expands a current provision in law that requires the Office of Small Business and DVBE to make recommendations to DGS to also include, with those recommendations, simplification of specifications and terms in order to increase opportunities minority-owned businesses, women-owned businesses, LGBTQ-owned businesses.
- 9) Expands the duties of the Office of Small Business and DVBE to also include:
  - a) Marketing the benefits and availability of state small business certification to businesses that currently hold a federal certification as a DBE.
  - b) Making available the option for an applicant or certified firm to voluntarily identify that the business is at least 51% owned by, and who management and daily operations are controlled by, on or more individuals who identify as any of the following:
    - i) Black, as defined; Hispanic, as defined; Native American, as defined; Asian-Indian, as defined.
    - ii) A woman.
    - iii) LGBTQ.
- 10) Requires DGS when certifying and determining eligibility to make available the option for an applicant or certified firm to voluntarily identify that the business is at least 51% owned by, and whose management and daily operations are controlled by, one or more individuals who identifies as any of the following:

- a) Black, defined; Hispanic, ad defined; Native American, as defined; Asian-Indian, as defined.
  - b) A woman.
  - c) LGBTQ.
- 11) Requires DGS to consider appropriate remedial actions to be taken in regards to mandatory reporting agencies that failed three out of five years to meet their SB or DVBE goals, including, but not limited to, the removal of the department's delegated contract authority or the placement of additional restrictions on contracting activity, as specified.
- 12) Requires DGS to contract for a statewide procurement and contracting disparity study, in order to guide outreach strategies, state government program development, and improvement to contracting policies. The bill requires DGS to post, on or before January 1, 2025, to post a report to its internet website setting forth the result of the study and implementation actions taken in response to it.
- 13) Makes various legislative findings.

## **Background**

*Purpose of the Bill.* According to the author's office, "in 2006, Governor Schwarzenegger signed Executive Order S-02-06, which directed all state agencies, departments, boards, and commissions to achieve a minimum goal of 25% for small business participation in state procurements and contracts. While Executive Order S-02-06 remains on the books, its enforcement has been lax. Of the 231 state agencies, departments, and commissions, only 12 have adopted a small business/disabled veterans business enterprise policy. In addition it is difficult and confusing for small businesses to gain the certification required to do business with the State of California. AB 2019 codifies the 25% Executive Order into law as a formal 'Economic Equity First' policy. This bill also requires each agency, department, board, and commission to adopt the 'Economic Equity First' or a commensurate policy."

### *State Procurement Processes Designed to Diversify California Businesses.*

Existing law provides for several programs designed to boost the participation of underrepresented business in state government contracting, including small businesses and those owned by women, minorities and disabled veterans. In order to effectively deploy these programs, the state has vested DGS, GO-Biz, and the

Department of Veterans Affairs (DVA) with the responsibility for coordinating with other state agencies to boost contracting opportunities for underrepresented business.

*Participation goals.* On March 29, 2006, Executive Order S-02-06 by Governor Schwarzenegger, established a minimum participation goal of 25% for small businesses/microbusinesses and directed DGS to monitor the progress of all agencies, departments, boards and commissions towards meeting the 25% small business participation goal. This bill codifies this 25% participation goal.

It should be noted that there is currently no microbusiness participation goal; rather the 25% participation goal for small businesses is a combination of small businesses and microbusinesses. Also, though DGS implements various strategies to aid departments' achievement of their participation goals, there is no statutory penalty for not meeting the goal.

Every year, DGS releases a Consolidated Annual Report (CAR) on contracting dollars that state departments award to small businesses. During fiscal year 2018-19 there were 131 mandatory reporting departments, those that are under DGS' statutory purchasing authority, that are required to report and another 27 state departments that report voluntarily, departments that are not under DGS' statutory purchasing authority.

According to the 2018-19 CAR, mandatory reporting departments did not meet the statewide goal; reporting 20.58% participation by small businesses/microbusinesses. The primary reason why departments gave for not meeting the participation goals was the large number of emergency contracts related to the 2018 wildfires, such as the Camp Fire. Other departments, such as Water Resources and State Hospitals, cited the lack of qualified contractors and the highly specialized contracts with little to no availability of certified firms as the main reason for not meeting the participation goals. Removing major emergency purchases from the reporting, mandatory departments would have met the 25% participation goals; reporting 25.59% of total dollars being awarded to small businesses.

Based on data that DGS is required to publicly report, aside from 2018-2019, the state has generally met the 25% small business goal and the three percent DVBE procurement participation goals. These official numbers are, however, only part of the program assessment. DGS prepares an extensive annual report on state procurement activities, the *California Consolidated Report*. In addition to

reporting the amount of contracts with small businesses and DVBES, these reports also provide information on outreach activities and other information to provide a framework for understanding the state's targeted procurement activities.

Although DGS works diligently to gather and aggregate this information, the CAR also highlights potential data irregularities, including the inconsistent reporting by state agencies and the failure of some state agencies to even make a report. As an example, in 2012-13, only 79% of the mandatory reporting entities reported their contracting activity to DGS.

The data also provides only a partial look at contracting activities, as it reflects the amount contracted for and not the amounts actually received by a small business or DVBE. A state audit of the DVBE Program, released in 2019, suggests that very few state agencies have implemented practices to monitor and report DVBE procurement participation violations for follow-up by DGS.

### **Related/Prior Legislation**

AB 915 (Chiu, 2021) would have codified a 25% small business goal for state procurement and proposes a number of actions to enhance the ability and commitment of state agencies to include small business (SBs), disadvantaged business enterprises (DBEs) and disabled veteran business enterprises (DVBES) in state contracting, as specified. (Held in the Senate Appropriations Suspense File)

**FISCAL EFFECT:** Appropriation: No Fiscal Com.: Yes Local: Yes

According to the Senate Appropriations Committee:

- Unknown fiscal impact, ranging in the hundreds of thousands of dollars (General Fund), to DGS, which would include:
  - One-time time cost to develop the proscribed policies and to contract for the disparity study and develop any subsequent implementation actions.
  - Ongoing costs to address workload associated with the expanded responsibilities of the Office of SB and DVBE Services, such as marketing the benefits and availability of state SB certification and making available the option for an application to make a voluntary identification, as specified.
- The Office of the Small Business Advocate under the Governor's Office of Business and Economic Development estimates total ongoing costs of \$500,000 to research, coordinate, and compile data with external agencies.



- Unknown, potentially significant costs across all impacted state agencies to develop and implement their economic equity first action plans and policies as proscribed. Actual costs will vary and depend on, among other things, the extent that an agency might already be doing this work. For example, the California Department of Insurance estimates costs of \$155,000 in Fiscal Year (FY) 2022-23, \$291,000 in FY 2023-24, and \$264,000 in FY 2024-25 and ongoing to revise its policies and procedures (Insurance Fund). If all state agencies that fall under the provisions of this bill experience similar costs, the total fiscal impact to these state agencies will likely range in the hundreds of thousands of dollars, ongoing.

**SUPPORT:** (Verified 8/12/22)

California Asian Pacific Chamber of Commerce (source)  
California State Controller, Betty T. Yee  
California State Treasurer, Fiona Ma  
Asian Business Association of Los Angeles  
Asian Business Association of San Diego  
Asian Pacific Islander American Public Affairs Association  
Avvento Consulting  
Bay Area Council  
California Forward Action Fund  
California African American Chamber of Commerce  
California Chamber of Commerce  
California Charter Schools Association  
California Forward  
California Hispanic Chamber of Commerce  
California Retailers Association  
California Association for Micro Enterprise Association  
California Retailers Association  
City of San Diego  
Correct Direct Marketing  
Flasher Barricade Association  
Gentlemen Health  
Greater Riverside Hispanic Chamber of Commerce  
Greater Sacramento Economic Council  
Intel Consulting Management, LLC  
JEDI  
Kern County Hispanic Chamber of Commerce  
Los Angeles County Business Federation

Los Angeles Latino Chamber of Commerce  
National Association of Women Business Owners  
National Federation of Independent Business  
Sac Valley Translations, Inc.  
Sacramento Area Council of Governments  
Sacramento Asian Pacific Chamber of Commerce  
Sacramento Metropolitan Chamber of Commerce  
San Francisco Bay Area Hispanic Chamber of Commerce  
San Joaquin County Hispanic Chamber of Commerce  
Small Business California  
Southeast Asian Community Center  
Valley Vision

**OPPOSITION:** (Verified 8/12/22)

None received

**ARGUMENTS IN SUPPORT:** According to supporters of the bill, “California contributes 1/7<sup>th</sup> of the United States’ GDP, and is home to 3.9 million small business, which make up 99.8% of all businesses, of which 1.6 million are minority-owned. Small businesses not only contribute significantly to the tax base of the State but also accounted for seven million Californians or 48.8% of all employment in the State. It is therefore necessary, as a matter of policy, for the State of California to ensure that a fair share of procurement spending be directed and dedicated to small and minority-owned small businesses.”

**ASSEMBLY FLOOR:** 76-0, 5/25/22

**AYES:** Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Bigelow, Bloom, Boerner Horvath, Mia Bonta, Bryan, Calderon, Carrillo, Cervantes, Chen, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Mike Fong, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Haney, Holden, Irwin, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wilson, Wood, Rendon

NO VOTE RECORDED: Berman, O'Donnell

Prepared by: Felipe Lopez / G.O. / (916) 651-1530  
8/15/22 13:35:04

\*\*\*\* **END** \*\*\*\*