
SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

Senator Bill Dodd

Chair

2021 - 2022 Regular

Bill No:	AB 915	Hearing Date:	6/22/2021
Author:	Chiu, et al.		
Version:	5/3/2021 Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Felipe Lopez		

SUBJECT: Small and disadvantaged business enterprises

DIGEST: This bill codifies 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 businesses, disadvantaged business enterprises (DBEs) and disabled veteran business enterprises (DVBEs) in state contracting.

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 small businesses, 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 to provide, among other things, direction, recommendations, and strategies as to how to ensure that DBEs are effectively involved and benefitting from the procurement process of the agency. The action plan and policy are required to be submitted to the agency secretary, department director, or executive officer by January 1, 2023, and would require adoption of that plan by January 1, 2024.
- 2) 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, microbusinesses, DBEs, and DVBEs, as well as compliance and implementation of specified action plans and policies by state agency liaisons and advocates.

- 3) 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 and DBE, to be easily accessible from the homepage of the GO-Biz internet website.
- 4) Would add a language into the Act that would declare that the state economy is strengthened by the diversity and resiliency of its small businesses and that it is essential to ensure all small businesses are able to fully participate in the domestic and global markets, including businesses owned by women and other specified groups.
- 5) Defines "disadvantaged business enterprises" to mean "socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. The social disadvantage must stem from circumstances beyond their control."
- 6) 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.
- 7) Requires, with respect to public works contracts, a preference for DBEs, a separate five percent of the lowest responsible bidder meeting specifications.
- 8) Expands a current provision to include, among those businesses to which this type of contract may be awarded, a DBE, so long as the agency obtains written bid submittals from two or more specified businesses.
- 9) 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 for DBEs.
- 10) Requires DGS to establish a fast track small business certification process for business enterprises that hold relevant federal certifications.
- 11) Authorizes DGS to apply relevant federal certifications for the business categories and in its delineated procurement authority to other state agencies.
- 12) Requires DGS to consider appropriate remedial actions to be taken in regards to mandatory reporting agencies that failed in three out of five years to meet their

small business or DVBE goals, and to include department actions in the department's consolidated annual report.

- 13) Requires a current DGS report to include the level of participation, by agency, of dual certified small business and DBEs in statewide contracts, including dollar values of contract awards for specified categories.
- 14) Makes various legislative findings.

Background

Purpose of the bill. According to the author's office, "the State of California has enormous purchasing power, which can be used to assist small and diverse businesses that have been hit hard during Covid-19. This bill is an important step towards ensuring small businesses receive a fair share of state contracts. AB 915 sets a 25% state procurement goal for small businesses, and takes steps to make state contracting more accessible to our entrepreneurs. Importantly, this bill also looks at small business revival through an equity lens by creating an 'Economic Equity First' policy that is inclusive of small businesses and diverse businesses. By establishing a clear process to ensure the state meets its 25% goal of small business contracting, and that minority-owned businesses are included in this contracting goal, AB 915 will facilitate economic equity in state contracting."

State procurement processes designed to diversify the businesses that provide critical services to the state. 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.

Small business eligibility requirements. In order for a small business to be eligible for certification, the small business must be independently owned and operated; not dominant in its field of operation; and, its principal office must be located in California. In addition, the business must be either a business with 100 or fewer employees and an average annual gross receipts of \$15 million or less over the last three tax years; a manufacturer, as defined, with 100 or fewer employees; or, a microbusiness. A small business will automatically be designated as microbusiness, if gross annual receipts are less than \$3.5 million; or the small business is a manufacturer with 25 or fewer employees.

Upon meeting eligibility requirements, certified small businesses and microbusinesses are entitled, to among other things, a five percent bid preference. The goal of the preference is to help small and micro businesses to be more competitive in the bid process, thereby enhancing state contract awards directly or indirectly to these types of businesses. The preference is only used for computation purposes to determine the winning bidder, the contract is awarded at the actual bid amount.

In addition, certified small businesses are eligible for the State's Business Participation Program, which sets a goal for the use of small businesses in at least 25 percent of the state's overall annual contract dollars.

DVBE Program. The DVBE Program directs state governmental entities, such as state agencies and departments, to procure goods and services from DVBEs that DGS has certified as meeting the eligibility requirements of a DVBE. The legislative intent of the program is to target DVBEs and for those DVBEs to benefit financially from doing business with California. In order for a business to be certified as a DVBE, the business must be at least 51 percent owned by one or more disabled veterans, have its daily operations managed by one or more disabled veterans, and have its home office located in the United States.

The DVBE Program requires state governmental entities that award contracts for goods or services, known as awarding departments, to meet or exceed the statewide participation goal of three percent. Awarding departments may meet the three percent goal either by contracting directly with a certified DVBEs as prime contractors or by requiring a prime contractor to use DVBEs as subcontractors for a portion of the work.

State departments that fail to meet the annual three percent goal can, in theory, have their delegated contracting authority removed, however DGS has never removed that authority based solely on a department's failure to meet the percent goal.

Disadvantaged Business Enterprises. The DBE Program, under the Department of Transportation is designed to remedy ongoing discrimination and the continuing effects of past discrimination in federally-assisted highway, transit, airport, and highway safety financial assistance transportation contracting markets nationwide. The primary remedial goal and objective of the DBE program is to level the playing field by providing small business owned and controlled by socially and economically disadvantaged individuals a fair opportunity to compete for federally funded transportation contracts.

The California Department of Transportation (Caltrans) and nine other government agencies in California participate in the DBE certification program. The federal government uses the DBE program to ensure that federally assisted contracts for highway, transit and aviation projects are made available for small business concerns owned and controlled by socially and economically disadvantaged individuals. In general, DBEs are larger than state certified Small Businesses, but smaller than state certified Small Business-Public Works. The DBE employment and revenue standards are based on business' industry sector and are set through regulation by the federal Small Business Administration.

While certified by Caltrans and local agencies, the DBE program is a national program and there is no requirement that the business is head-quartered in California. Caltrans provides a fairly robust set of resources, including a searchable database for vendors looking for DBE subcontractors, as well as free training. DBEs are also included in the Caltrans SB 1 Small Business Outreach Plan and Implementation Report, which is applied to the state's \$54 billion transportation infrastructure investment plan.

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.

Prior/Related Legislation

SB 430 (Borgeas, 2021) requires a state agency to establish a policy to reduce or waive civil penalties for violations of regulatory or statutory requirements by a small business under specified conditions. (Held on the Senate Appropriations Committee Suspense File)

SB 543 (Limon, 2021) requires a state agency that significantly regulates or impacts nonprofit corporations to designate a person to serve as a nonprofit liaison, as specified. (On the Senate Inactive File)

SB 665 (Umberg, 2021) the Voluntary Veterans' Preference Employment Policy Act authorizes a private employer to establish a veterans' preference employment policy. (Pending in the Assembly Labor and Employment Committee)

AB 349 (Holden, 2021) requires state agencies to publish and make widely available information regarding public notice of contracts and procurement in order to facilitate the participation of small businesses. (Pending in the Senate Governmental Organization Committee)

AB 1574 (Jobs, Economic Development, and the Economy, 2021) makes various changes to California's certified small and microbusiness, DVBE, and Target Area Contract Preference Act programs, including enhanced public promotion of the programs, authorizing any public prosecutor to bring a civil action for a violation involving a knowingly fraudulent representation, and expanding and clarifying the Target Area Contract Preference Act. (Pending in the Senate Appropriations Committee)

AB 1809 (Cervantes, 2019) the Procurement Transparency Act of 2019 would have authorized a state agency to award a contract for services or information technology, as specified, to a certified small business or to a DVBE, as long as the agency obtains price quotations from two or more certified small businesses or DVBEs, and would have made various changes to the DVBE Program intended to address issues and findings from the 2014 and 2019 state audits. (Held on the Senate Appropriations Committee Suspense File)

SB 588 (Archuleta, Chapter 80, Statutes of 2019) tightened state contracting practices related to the DVBE Program by authorizing the withholding of all or portions of the final payment on contracts until the prime contractor has certified DVBE subcontractors have been paid. In addition, required the Legislative Analyst's Office (LAO) to undertake a complete assessment of the DVBE procurement program by January 1, 2024.

AB 230 (Brough, Chapter 676, Statutes of 2019) tightened state contracting practices related to the DVBE Program, as specified.

AB 961 (Quirk-Silva, 2017) would have tightened the existing monitoring and accountability requirements for state procurement activities related to the DVBE Program. (Vetoed by Governor Brown)

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

SUPPORT:

California Asian Pacific Chamber of Commerce (Co-Source)

California Hispanic Chamber of Commerce (Co-Source)

California African American Chambers of Commerce (Co-Source)

Asian Business Association

Asian Pacific Islander American Public Affairs Association
Association of Financial Development Corporations
Black Leadership Council
California Association for Micro Enterprise Opportunity
California Business Roundtable
California Charter Schools Association Advocates
California Hispanic Chamber of Commerce
California Immigrant Policy Center
California Forward Action Fund
California Retailers Association
California State Treasurer
City of San Diego
Coalition of Small and Disabled Veteran Businesses
Golden Gate Business Association
Greater Los Angeles African American Chamber of Commerce
Greater Sacramento Economic Council
Los Angeles County Business Federation
National Association of Women Business Owners California
Sacramento Area Council of Governments
Sacramento Asian Pacific Chamber of Commerce
Sacramento Metropolitan Chamber of Commerce
San Diego Regional Chamber of Commerce
San Francisco Chamber of Commerce
Small Business California
Small Business Majority
Valley Vision

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to supporters of the bill, “much has been said this past year about the importance of equity when it comes to small and minority-owned businesses. More than one third of California’s employer firms are owned by people of color, yet they are largely under-resourced and under-funded. Making government contracts more accessible to small businesses owned by people of color would begin to level the play field. Considering the vast purchasing power and influence of the state of California, enacting AB 915 will be a critical next step to raising the tide for all small businesses in the state.”

DUAL REFERRAL: Governmental Organization & Business, Professions Committee & Economic Development Committee