
SENATE COMMITTEE ON HEALTH

Senator Dr. Susan Talamantes Eggman, Chair

BILL NO: AB 1392
AUTHOR: Rodriguez
VERSION: March 30, 2023
HEARING DATE: July 5, 2023
CONSULTANT: Reyes Diaz

SUBJECT: Hospitals: procurement contracts

SUMMARY: Requires specified hospitals to submit an annual detailed and verifiable plan, rather than a report, for increasing procurement from minority, women, LGBT, and disabled veteran business enterprises. Requires the Department of Health Care Access and Information (HCAI) to establish a supplier diversity web page. Permits HCAI to establish and operate a clearinghouse to maintain a database, and verify the statuses, of those business enterprises.

Existing law:

- 1) Establishes HCAI in the California Health and Human Services Agency to expand equitable access to quality, affordable health care for all Californians through resilient facilities, actionable information, and the health workforce each community needs. [HSC §127000, et seq.]
- 2) Requires each hospital with operating expenses of \$50 million or more, and each hospital with operating expenses of \$25 million or more that is part of a hospital system, to submit a report to HCAI on its minority, women, LGBT, and disabled veteran business enterprise (“targeted business enterprises”) procurement efforts during the previous year. Requires the report to include all of the following:
 - a) The hospital’s supplier diversity policy statement;
 - b) The hospital’s outreach and communications to targeted business enterprises, including:
 - i) How the hospital encourages and seeks out targeted business enterprises to become potential suppliers;
 - ii) How the hospital encourages its employees involved in procurement to seek out targeted business enterprises to become potential suppliers;
 - iii) How the hospital conducts outreach and communication to targeted business enterprises;
 - iv) How the hospital supports organizations that promote or certify targeted business enterprises; and,
 - v) Information regarding appropriate contacts at the hospital for interested business enterprises.
 - c) The hospital’s procurements that are made from targeted business enterprises with at least a majority of the enterprise’s workforce in California, with each category aggregated separately, to the extent that information is readily accessible. [HSC § 1339.87]
- 3) Prohibits these provisions from being construed to require quotas, set-asides, or preferences in a licensed hospital’s procurement of goods or services, and from applying to hospital producer or licensee contracts. Grants hospitals the authority to use business judgment to select the supplier for a particular contract. [HSC §1339.87]

- 4) Makes a hospital that fails to file the report subject to a civil penalty of \$100 per day. Authorizes a hospital to request, and HCAI to grant, a 30-day extension to file the report if needed due to unintended or unforeseen delays. [HSC §1339.87]
- 5) Requires each hospital subject to these provisions to annually update its supplier diversity report and submit the new report to HCAI no later than July 1. Requires HCAI to establish and maintain a link on its website that provides public access to the contents of each hospital's report on targeted business enterprises procurement efforts. [HSC §1339.87]
- 6) Requires HCAI to convene a hospital diversity commission, with specified commissioners, to advise and provide recommendations to HCAI and the hospital industry on the best methods to increase procurement with diverse suppliers within the hospital industry. [HSC § 1339.88]

This bill:

- 1) Requires hospitals identified in 2) above of existing law to submit an annual detailed and verifiable plan, rather than a report, for increasing procurement from targeted business enterprises. Requires the plan to include, in addition to the information in 2) above of existing law:
 - a) Short- and long-term goals and timetables, but not quotas, for increasing procurement from targeted business enterprises;
 - b) Methods in which the hospital supports, partners with, or interacts with organizations and other entities in the procurement ecosystem that promote, certify, or contract with targeted business enterprises;
 - c) Methods in which the hospital resolves any issues that may limit or impede an enterprise from becoming a supplier; and,
 - d) The planned and past implementation of relevant recommendations made by the hospital diversity commission, as specified.
- 2) Requires HCAI to establish a supplier diversity web page to inform diverse suppliers on the hospital's procurement process, including the contact information of a diverse business outreach liaison.
- 3) Permits HCAI to audit the plans required in this bill for compliance and accuracy.
- 4) Makes Legislative findings and declarations that each hospital that is not required to submit a plan pursuant to this bill is encouraged to voluntarily adopt a detailed and verifiable plan for increasing procurement from targeted business enterprises.
- 5) Requires HCAI in consultation with the hospital diversity commission, to establish guidelines for hospitals to voluntarily utilize when pursuing procurement efforts, activities, or programs in accordance with this bill.
- 6) Expands the number of commissioners in the hospital diversity commission to include one commissioner who is a representative of a group purchasing organization, manufacturer, or vendor of goods and services for hospitals who, at the time of appointment, is a practitioner or expert in the field of supplier diversity, and any additional commissioner at the discretion of the HCAI director. Permits HCAI to provide compensation to the commissioners for their services, as specified.

- 7) Requires the HCAI to provide outreach and assistance, in consultation with the commissioners, to hospitals, manufacturers, vendors, or group purchasing organizations of hospital goods and services seeking to adopt recommendations made by the hospital diversity commission or to increase procurement from targeted business enterprises.
- 8) Requires HCAI to provide outreach and assistance, in consultation with the commissioners, to targeted business enterprises seeking to be a supplier for a hospital, manufacturer, vendor, or group purchasing organization of hospital goods and services.
- 9) Permits HCAI to establish and operate a clearinghouse to maintain a database, and verify the statuses, of targeted business enterprises that are prime suppliers or subcontract suppliers to hospitals or other entities in the procurement ecosystem of hospital goods and services. Prohibits this provision from being construed to require a hospital or other entity to utilize the clearinghouse. Permits a hospital, in order to increase procurement from targeted business enterprises as reported by the hospital to HCAI, or any other entity in the procurement ecosystem of hospital goods and services for purposes of procurement that it elects to pursue, to choose business enterprises that are included in the clearinghouse, or to choose other targeted business enterprises not included in the clearinghouse and that are prime suppliers and subcontract suppliers of hospital goods and services.

FISCAL EFFECT: According to the Assembly Appropriations Committee, HCAI estimates costs to implement the requirements of this bill will be \$986,000 for fiscal year (FY) 2024-25 and ongoing to build out the program to support expanded outreach, engagement, and compliance activities. If HCAI elects to build out the clearinghouse, costs will also include additional information technology staff positions to support the planning, development, and ongoing maintenance and operations of the clearinghouse, which would add \$377,000 to the overall FY 2024-25 and ongoing costs. HCAI estimates it will also require \$1 million in FY 2024-25 to support contracting with external developers to develop the system in partnership with state staff. Thus, HCAI estimates the overall costs of this bill to be \$2.36 million for FY 2024-25 and \$1.38 million in FY 2025-26 and ongoing (California Health Data and Planning Fund).

PRIOR VOTES:

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|------------------------------------|---------|
| Assembly Floor: | 60 - 10 |
| Assembly Appropriations Committee: | 12 - 3 |
| Assembly Health Committee: | 10 - 1 |

COMMENTS:

- 1) *Author's statement.* According to the author, increasing diverse procurement spending, benefits hospitals by widening the supplier pool and increasing competition on contracts. It also benefits disadvantaged communities by opening more economic opportunities and creating a supplier roster that reflects a hospital's patients and community. AB 962 (Burke, Chapter 815, Statutes of 2019) recognized these benefits and required hospitals to report their supplier diversity efforts, outreach, and data to HCAI. However, HCAI reported in its latest report that only 2% of hospital spending went to diverse suppliers. They deserve more. This bill would improve the Hospital Supplier Diversity Program by adopting strategies from successful programs like the California Public Utilities Commission (CPUC) Supplier Diversity Program and the California Department of Insurance's (CDI) Insurance Diversity

Initiative. This bill requires hospitals to submit a detailed and verifiable plan with short- and long-term goals and timetables to increase diverse procurement.

- 2) *Background.* According to information provided by the author of this bill, only 2% of nearly \$120 billion in total hospital procurement dollars are spent on targeted business enterprises. The existing Hospital Supplier Diversity Program only requires hospitals to submit a report on previous procurement efforts. Although this is helpful to the Hospital Diversity Commission for devising recommendations and understanding the industry, the reports are far shorter, less detailed, and less ambitious than plans submitted to the CPUC for their Supplier Diversity Program. The CPUC's Supplier Diversity Program has a 31.1% rate of procurement dollars spent on targeted business enterprises, surpassing the CPUC's goal of 21.5%. Though the Hospital Diversity Commission releases recommendations, hospitals are not required to implement these recommendations. The program also provides little assistance to hospitals. CDI's Supplier Diversity Initiative has had educational and networking summits since 2012. The CPUC also provides outreach and assistance through workshops, webinars, feedback, and education. HCAI, in contrast, has only suggested creating an "En Banc style" of meeting in the future in their November 15, 2022, report.
- 3) *California Hospital Diversity Program.* According to the 2022 Hospital Supplier Diversity Commission First-Year Recommendations Report, the commission has been meeting regularly since March 2021, and has reviewed baseline data from the first year Hospital Supplier Diversity Reports; heard from hospitals with more mature supplier diversity programs on some best practices in the hospital industry; and learned more about hospital procurement and supplier diversity. Some of the recommendations are as follows:
 - a) The hospital industry executive leadership should:
 - i) Create a supplier diversity policy statement that promotes the use of diverse suppliers;
 - ii) Develop and implement outreach and reporting metrics that support contracting with diverse suppliers;
 - iii) Develop and implement hospital supplier diversity procurement metrics that are owned by executive leadership;
 - iv) Develop, implement, and fund an internal hospital accountability system to meet specified metrics related to outreach, diverse business usage, and provision of technical support for implementation;
 - v) Develop and implement an inclusion policy for hospitals to identify and track spending with targeted business enterprises;
 - vi) Develop and implement procurement processes and policies to document and mitigate internal criteria that may limit or impede diverse suppliers' ability to competitively respond to bids; and,
 - vii) Develop and implement a supplier diversity webpage to inform diverse suppliers on the hospital's procurement process including the contact information of a diverse business outreach liaison.
 - b) The HCAI Director should:
 - i) Produce annual regular analyses, as defined by staff, with data, which should include, but not limited to, analysis statewide, by region, and by hospital type; distribution of spending with targeted business enterprises; and spending comparisons and benchmarks;

- ii) Publish on its website and distribute via HCAI communication channels a list of hospitals required to report based on thresholds outlined in the statute for each annual reporting period and are required to submit supplier diversity reports to HCAI;
- iii) Revise reporting regulations to require disaggregated reporting from hospitals, which could include categories of hospital spending, counts of diverse suppliers, supplier demographics by category, and allowing for reporting of intersectional identities for diverse supplier (e.g., suppliers that are both minority and woman owned); and,
- iv) Collaborate with other public supplier diversity transparency programs, including CPUC, CDI, and the California Secretary of State on lessons learned, best practices, and challenges/obstacles to advance program goals.

Under the current program, 342 hospitals were required to submit reports for 2021. Of the 342, 313 hospitals had expenses in excess of \$50 million and 29 hospitals had expenses in excess of \$25 million and are part of a hospital system. For the 2021 report period, the program did not yet have a regulation that details the process on penalties and appeals for hospitals, so penalties for late submission were not enforced for the 2021 report period. In 2021, 57 hospitals submitted their reports late.

- 4) *Prior legislation.* AB 962 (Burke, Chapter 815, Statutes of 2019) requires hospitals to submit an annual report to HCAI on their supplier diversity procurement efforts, including a policy statement, outreach to diverse businesses, and how they support these enterprises in their procurement processes.

AB 1678 (Gordon, Chapter 633, Statutes of 2014) extends provisions of the supplier diversity program at the CPUC to include LGBT business enterprises.

AB 53 (Solorio, Chapter 414, Statutes of 2012) requires all major insurers to submit an annual report to CDI regarding the implementation of their efforts to increase procurement from women, minority, and disabled veteran business enterprises. These provisions sunset on January 1, 2019.

AB 2758 (Bradford, Chapter 475, Statutes of 2010), requires cable corporations (with gross annual revenues exceeding \$25 million) to annually submit a detailed and verifiable plan for increasing women, minority, and disabled veteran business enterprise procurement.

- 5) *Support.* The sponsors and supporters of this bill, who largely represent businesses, argue that according to the American Hospital Association increasing procurement diversity is not just a social mission but a business strategy that widens the supplier pool and increases competition on the price and quality of goods and services. Hospitals prioritizing supplier diversity benefit from greater innovation and value through cost reductions, better contract terms, and improved service. The community also benefits from local job creation and a supplier roster that mirrors the patient and community populations. Additionally, diverse businesses are more likely to work as small businesses, which tend to hire people from diverse backgrounds, providing people from marginalized communities with a pathway to financial security and upward mobility. Supporters further argue that in the most recent report that HCAI released, diverse procurement spending only accounted for 2% of the total hospital procurement spending of \$119,600,502,405, and cite the diversity programs under the CPUC and CDI as two successful models.

- 6) *Oppose unless amended.* Several entities representing the hospital industry argue that under current law, hospitals submit an annual report to HCAI on their targeted business enterprise procurement efforts to help inform future regulations. They state that California’s hospitals support the goals of this reporting requirement, but it is an additional administrative requirement that equals additional resources at a time when many hospitals are already stretched thin. These entities request the following amendments:
- a) Delay the requirement that hospitals must develop detailed and verifiable plans until at least 2027. This would allow HCAI to collect five years of data and would give the Hospital Supplier Diversity Commission time to evaluate and develop recommendations for the state’s consideration;
 - b) Similar to hospital community benefit assessments, extend the plan submission requirements from annually to every three years. Because the strategy to increase supplier diversity can often take time to develop and mature, there is not much change year over year; and,
 - c) Delete the \$100 per day penalty for not reporting to HCAI.

SUPPORT AND OPPOSITION:

Support: California Hispanic Chambers of Commerce (co-sponsor)
Los Angeles Latino Chamber of Commerce (co-sponsor)
California Association for Micro Enterprise Opportunity
Greater Riverside Hispanic Chamber of Commerce
Small Business Majority
The East Los Angeles Community Union
Vanir Construction Management
Vasquez + Company, LLC
Veterans Chamber of Commerce

Oppose: Association of California Healthcare Districts (unless amended)
California Hospital Association (unless amended)
District Hospital Leadership Forum (unless amended)
PIH Health (unless amended)

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