

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE  
ECONOMY

Carlos Villapudua, Chair

AB 3236 (Hoover) – As Introduced February 16, 2024

**SUBJECT:** Public contracts: Small Business Procurement and Contract Act

**SUMMARY:** This bill doubles the maximum contract value to \$500,000 under the Small Business Procurement and Contract Act from the current maximum amount of \$250,000.

Specifically, **this bill:**

- 1) Increases the maximum amount of a contract awarded pursuant to the act from \$250,000 to \$500,000 to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, as long as the agency obtains price quotations from two or more certified small businesses, including microbusinesses, or from two or more disabled veterans business enterprises.
- 2) If the estimated cost to the state is less than five thousand dollars (\$5,000) for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

**EXISTING LAW:**

- 1) Designates DGS as the lead agency implementing the state Small Business Procurement and Contract Act and administrator of the Office of the Small Business and DVBE Services, which includes certifying and implementing targeted preference programs for certified small businesses, microbusinesses, and DVBEs.
- 2) Requires state agencies to set a small business participation goal consistent with guidelines set by the DGS Office of Small Business and DVBE Procurement.
- 3) Authorizes a 5% procurement preference for certified small business bidders or non-small business bidders that provide for small business and microbusiness participation in the contract.
- 4) Defines a “small business” as an independently owned and operated business that is not dominant in its field of operation; in addition, the principal office of which is located in California, the officers of which are domiciled in California and which, together with affiliates, has 100 or fewer employees, with an average annual gross receipt of \$10 million or less over the previous three years.
  - a) For a small business in the manufacturing sector, the limitation on an annual gross receipt is \$15 million.

- b) For a small business bidding on a public works contract, as defined, the maximum number of jobs is 200 or fewer employees, and the limitation on the average annual gross receipt is \$36 million.
  - c) A “microbusiness” is a small business with an average annual gross receipt limitation of \$5 million or a manufacturer with 25 or fewer employees.
- 5) Applies the 3% DVBE participation goal on each awarding state agency, department, and officer that enters into a contract for materials, supplies, equipment, alteration, repair, or improvement. This requirement can be waived on a specific contract with the approval of the department director or another designated person.
- 6) Authorizes a streamlined small business procurement option (Small Business/DVBE Option) for state contracts over \$50,000 and under \$250,000. Under this process, the contract is not put out for bid; instead, the contracting agency can award the contract to a certified small business after obtaining two price quotes from two certified small businesses. Similar provisions may be used to contract with a DVBE and after obtaining two additional DVBE price quotes.
- 7) Authorizes a 5% preference to the lowest responsible bidder or highest-scoring responsible meeting specifications who provides for certified small business or microbusiness subcontractor participation; this applies to state contracts for goods, information technology, services, and construction, as specified.
- 8) Defines a “DVBE” as a business certified as a sole proprietorship, corporation, or partnership with its home office located in the US, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business. In addition, a DVBE meets all of the following:
- a) A disabled veteran is a veteran of the military, naval, or air service of the US, including, but not limited to, the Philippine Commonwealth Army, Regular Scouts, “Old Scouts,” Special Philippine Scouts, “New Scouts,” and those who have at least a 10% service-connected disability and are domiciled in the state.
  - b) The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.
  - c) The DVBE’s ownership of the business meets the following criteria:
    - i) If the DVBE is a sole proprietorship, it is at least 51% owned by one or more disabled veterans.
    - ii) If the DVBE is a publicly owned business, at least 51% of its stock is unconditionally owned by one or more disabled veterans.
    - iii) If the DVBE is a subsidiary, it is wholly owned by a parent corporation, but only if one or more disabled veterans unconditionally own at least 51% of the voting stock of the parent corporation.

- iv) If the DVBE is a joint venture, it is an entity in which at least 51% of the joint venture's management, control, and earnings are held by one or more disabled veterans.

**FISCAL EFFECT:** Unknown

**COMMENTS:**

**Small Business Procurement and Contract Act:** California has a 40-year history of utilizing state contracting to support business development within targeted business populations. The statute sets an annual 3% DVBE procurement participation goal, and a 2006 executive order sets a 25% small businesses and microbusinesses participation goal for state agencies, departments, boards, and commissions.

While encouraging small business participation furthers the state's interest in having a robust small business sector, the Small Business Procurement and Contract Act also establishes the policy foundation for DVBE contract participation. The DVBE procurement program is intended to recognize the sacrifices of California's disabled military veterans and address the specific needs of disabled veterans seeking rehabilitation and training through entrepreneurship.

To assist state agencies in reaching these targeted procurement participation goals, state law authorizes:

- A procurement preference of 5% for bids using a certified small business as a prime or subcontractor.
- A streamlined alternative procurement process for smaller size contracts (between \$5,000 and \$250,000), known as the Small Business/DVBE Option, whereby an awarding department can contract directly with a certified small business or DVBE after comparing the bid against two other similar businesses.
- A DVBE incentive allows an awarding department to set an incentive percentage between 1% and 5% for a particular transaction.

In the state's experience, a majority of DVBEs are smaller size firms, with 86% having dual certifications, including 56.5% of all DVBEs also holding microbusiness certificates, 25.6% having a small business certification, and 0.6% having a small business public works certification. The remaining 14% of DVBEs operate with only a single DVBE certification.

DGS has a range of responsibilities relating to the implementation of the Small Business and DVBE program, including:

- Certification of DVBEs (36 new and renewed DVBEs certified in 2019-20, which brings the total of certified DVBEs in 2020-21 to 2,070);
- Certification of small businesses and microbusinesses (773 new and renewed certifications bringing the total number of certified small businesses and microbusinesses in 2020-21 to 20,460);

- Outreach to the potential small business and DVBE bidders (132 events, including 110 events to the veteran community in 2020-21);
- Marketing of the DVBE program to state agencies;
- Partnering with CalVet on meetings with departments that are not meeting participation goals;
- Consulting with the California Procurement Contracting Academy on the DVBE training of state contracting staff;
- Preparation of an annual consolidated report on DVBEs, small businesses, and microbusinesses' participation within state contracting activities; and
- Program oversight to identify abuses by bidders and failures performed by state departments and agencies.

**Arguments in Support:** According to Veteran Strong, “representing the almost 1,800 DVBE's & almost 18,000 small business, certified through the State of California, we once again support raising the Small Business and DVBE Option from \$250k to \$500k. AB 3236 only improves the Small Business and DVBE communities in contracting with the state agencies. An increase from \$250k to \$500k with the Small Business and DVBE option that AB 3236 proposes, will give California State certified small businesses and disabled veteran businesses the opportunity to perform at the prime contractor on smaller projects, which will in turn help elevate them to larger projects and better opportunity to perform as a prime contractor due to past performance, increased revenue, ability to secure larger necessary bonding and needed materials, hiring of personnel and funding of payroll.”

**Arguments in Opposition:** According to the Coalition of Small & Disabled Veteran Businesses, “The last time the cap was raised was in 2009 with the passage of AB 31 (Price), Chapter 212 of the 2009 Statutes. This measure (which took effect on January 1, 2010) increased the cap from \$100,000 to \$250,000. If this measure achieved what it was intended to do, the evidence would be proven through a dramatic increase in the number of contracts awarded to small and disabled veteran businesses (which would have grown exponentially each year henceforth as more small businesses received calls from DGS and other state agencies and departments). Unfortunately, the opposite has occurred.”

**Author Statement:** “An existing streamlined process, called the Small Business/DVBE Option, is an effective tool to increase small business and disabled veteran business enterprise (DVBE) participation in state contracts. Unfortunately, the current contract award amount limits small businesses from receiving the financial incentive from doing business with the state.

Existing law permits state agencies to award contracts for goods, services, or informational technology to certified SBs, micro-business (MB) and DVBEs with a value of between \$5,000 and \$250,000. AB 3236 will increasing the maximum-awarded amount to \$500,000, further improving procurement practices, meet participation rates, and help DVBEs and small businesses market their products, goods, and services. Additionally, it will promote the use of technologies and other innovative solutions for notifying SBs and DVBEs of state contracting opportunities.”

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Veteran Strong USA

**Opposition**

Coalition of Small and Disabled Veteran Businesses

**Analysis Prepared by:** Carla Castilla / J., E.D., & E. / (916) 319-2090