

Date of Hearing: April 26, 2021

ASSEMBLY COMMITTEE ON TRANSPORTATION

Laura Friedman, Chair

AB 349 (Holden) – As Amended April 15, 2021

SUBJECT: Small businesses: contracting: outreach: underrepresented groups

SUMMARY: Requires director and heads of all 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. Specifically, **this bill**:

- 1) Requires the Director of General Services (DGS) and the heads of other state agencies that enter into contracts, in addition to any other applicable requirement for public notice of contracts, publish or otherwise make available information regarding public notice of contracts in order to ensure all communities have access to the public notice.
- 2) Specifies that publishing this information is 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.
- 3) Specifies that to “publish or otherwise make available” includes, but is not limited to:
 - a. Placement of information in media, including, but not limited to:
 - i. General circulation newspapers, general circulation publications, and general market radio and television stations, including electronic media.
 - ii. Local and regional community newspapers.
 - iii. Newspapers, publications, and radio and television stations that provide information in languages other than English and whose primary audience is residents of minority and low-income communities.
 - iv. Publications, including electronic media, that are distributed to the general market and to newspapers, publications, and radio and television stations whose primary audience is composed of underrepresented groups, including, but not limited to, women, minorities, LGBT individuals, and disabled veterans.
 - b. Information booths at job fairs or conferences oriented to both the general market and the economically disadvantaged, as well as those events drawing a significant participation by minorities or women.
 - c. Dissemination of information to other platforms as the awarding agency deems appropriate.

- 4) Emphasizes Caltrans' authority to use existing resources for outreach efforts for events to promote small business enterprises, including, but not limited to, those owned by women, minorities, disabled veterans, LGBT individuals, and other disadvantaged groups, trainings to improve diversity, materials for matchmaking events, and resources for relationship development events to achieve goals established above for all agencies.

EXISTING LAW:

- 1) Requires directors of agencies, 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, do all of the following when entering into a state contract:
 - a. Establish goals, consistent with those established by the Office of Small Business and Disabled Veteran Business Enterprise Services, 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. Establish provisions and financial limits 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.
 - c. Give special consideration to small businesses and microbusinesses by reducing the experience required and reducing the level of inventory normally required.
 - d. Make awards, whenever feasible, to small business and microbusiness bidders for each project bid.
 - e. Give precedent to small business and microbusiness bidders over nonsmall business bidders, when nonsmall business bidders may be eligible.
- 2) Allows Caltrans to meet public notice requirements to publish and circulate information regarding state contracting on Caltrans' website.
 - a. If this information is published on Caltrans' website, Caltrans must also provide information listed on the department's website in trade papers, newspapers, or magazines, as appropriate in order to ensure all communities have access to the public notice, including those publications whose primary audience consists of underrepresented groups, including, but not limited to, women, minorities, LGBT, and disabled veterans.

FISCAL EFFECT: Unknown

COMMENTS: In 2006, Governor Schwarzenegger signed EO S-02-06, which directs all state agencies, departments, boards, and commissions to achieve a minimum goal of 25% for small

business participation in state procurements and contracts. According to the 2019 U.S. Small Business Administration's Small Business profile, 48.8% (7.1 million) of California's employees are employees of small businesses, 2.1 million of these employees are minority-owned business employees. State agencies in California are required to ensure small and microbusinesses are appropriately informed of potential contracting and procurement opportunities.

DGS maintains and reports annually on contract dollars awarded by state departments towards the state's 25% Small Business (SB)/Microbusiness and 3% Disabled Veterans' Business Enterprise (DVBE) participation goal in state procurement and contracting. State departments must annually report the total awarded state dollars for information technology, goods and services, construction procurements and contracts, and CAL-Card procurements, to DGS. Out of more than 200 state departments, 131 are "mandatory departments" that are under DGS' purchasing authority and are required to report SB and DVBE participation each fiscal year.

DGS' Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) reported in its California Consolidated Annual Report for Fiscal Year 2018-19, that of the 131 state departments that are required to report SB and DVBE participation in contracting, these departments awarded \$10.5 billion—the highest dollar amount awarded in the past five years. The state met the DVBE participation goal for the 11th year in a row at 3.2%, but – for the first time in six years – the state did not meet the SB participation goal. SB participation reached only 20.6%, primarily due to a small subset of large-dollar disaster relief procurements that did not include SB participation.

Top Small Business and Disabled Veterans' Business Enterprise Spending by Department for
Fiscal Year 2018-19

Department	Contract Dollars (in millions)	SB/Micro %	DVBE %
Resources Recycling and Recovery (CalRecycle)	\$2.1	0.2%	0.1%
Transportation (Caltrans)	\$1.6	31.0%	3.2%
Corrections and Rehabilitation	\$1.1	25.7%	4.2%
General Services	\$0.86	29.4%	3.9%
Water Resources	\$0.61	18.2%	3.7%
State Hospitals	\$0.44	32.4%	2.4%

OSDS reports making the following outreach efforts during 2018-19 in order to ensure SB/DVBE participation:

- Established and maintained strategic partnerships with 35 diverse organizations.
- Implemented a strategic partners survey to evaluate outreach efforts.
- Supported three major design-build projects.
- Used radio interviews, print advertisement, webinars, and participation in focused outreach.
- Hosted the annual Winter Business Showcase.
- Facilitated four quarterly workshops.

- Held the 19th annual State Agency Recognition Awards.
- Developed a flyer promoting the SB and DVBE First Policy.

OSDS reports continuation of the following to support SB/DVBE participation:

- Assist department buyers and SB/DVBE advocates with tools and best practices by providing internet resources.
- Require departments that do not meet mandated minimum participation goals to complete Improvement Plans.

Caltrans and Disadvantaged Business Enterprise (DBE) Program: Caltrans is required to participate in DBE in order to receive funding from the U.S. Department of Transportation (USDOT). The Office of Business and Economic Opportunity within Caltrans administers and ensures Caltrans' compliance with USDOT DBE program regulations.

The Federal Transit Administration (FTA) conducts an annual review of Caltrans' compliance with DBE. The March 2019 Report on Caltrans' DBE Program Compliance Review (Review) found that Caltrans did not meet its DBE goals in FY 2014, FY 2015, or FY 2016, reporting overall goal attainment of 1.89%, 3.71%, and 3.66%, respectively. Caltrans' achieved its DBE goal in FY 2017, attaining 5% DBE participation. Caltrans' analysis and corrective actions implemented to achieve future goals significantly improved in FY 2016. To encourage the attainment of future goals and the implementation of Caltrans' DBE program in good faith, the Review highlights several steps to help ensure Caltrans' compliance and the overall success of its DBE program.

Caltrans was found to be substantially deficient in the following areas:

- Caltrans' DBE Program Plan was out of date.
- Caltrans' Disadvantaged Business Enterprise Liaison Officer and DBE program support staff were not involved enough in the management and administration of the FTA DBE program.
- Caltrans did not consider all potential FTA-funded contracting opportunities in its FY 2017–19 goal methodology.
- Caltrans' efforts to foster small business participation on FTA-assisted contracts were lacking.
- Caltrans' procedures for documenting and evaluating good faith efforts did not comply.
- Caltrans did not adequately document or implement procedures for accurately counting DBE participation on FTA-assisted projects.
- Caltrans did not adequately ensure the accuracy of DBE utilization data used for semi-annual reporting or monitor program compliance.
- Caltrans did not maintain a bidders list, as required.

Minority-owned business in COVID-19: Restrictions aimed at slowing the spread of COVID-19 led to the permanent closure of 41% of Black-owned businesses between February and April, according to a study from the National Bureau of Economic Research. Black-owned businesses were also more likely to be in industries hit hard by coronavirus-related restrictions, such as retail and hospitality, according to a study by the Economic Policy Institute.

In an effort to uplift minority-owned businesses, and hold state agencies accountable to the 25% SB participation goals, this bill requires state departments reach a wider audience with specific

outreach to women owned, LGBT owned, and racial minority owned businesses for state procurement and contracting.

According to the author, “AB 349 requires the Department of General Services and other state agencies and departments to expand outreach to small businesses, particularly those owned by individual that identify as LGBTQ, racial minorities, or women. In California, small businesses account for 3.9 million, or 99.8% of all California businesses. Of these small businesses, 1.6 million are minority-owned. Small businesses not only contribute significantly to the economy but also account for 7 million employees across the state. Given the devastating impact of COVID-19 on small business, the state needs to be proactive in revitalizing communities and supporting small business now more than ever.”

Previous and related legislation: AB 915 (Chiu) of 2021, codifies Executive Order S-02-06. This bill is currently pending in the Assembly Jobs, Economic Development, and the Economy Committee.

SB 103 (Transportation) Chapter 95, Statutes of 2017, requires Caltrans to achieve, at a minimum, 25% certified small business participation in state-funded contracts and procurements, among only provisions.

SB 1045 (Polanco) Chapter 1165, Statutes of 2002, requires each state department or agency awarding a contract or procuring goods or services, and authorizes each local agency receiving state funds, to collect information and report annually to the Governor and the Legislature on the participation level of minority, women, and disabled veteran-owned business enterprises in these contract and procurement activities.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Julia Kingsley / TRANS. / (916) 319-2093