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AB-2974 Small Business Procurement and Contract Act: federal Infrastructure Investment and Jobs Act funding. (2021-2022)

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Assembly Bill No. 2974

CHAPTER 600

An act to amend Section 14838.1 of the Government Code, relating to public contracts.

[Approved by Governor September 27, 2022. Filed with Secretary of State September 27, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2974, Committee on Jobs, Economic Development, and the Economy. Small Business Procurement and Contract Act: federal Infrastructure Investment and Jobs Act funding.

Existing law requires the directors of the Department of General Services and other state agencies that enter into contracts concerning the provision of goods, information technology, services, and construction of state facilities, to establish goals for the extent of participation of small businesses, including microbusinesses, for those contracts, to provide for small business preference, as specified, in the award of those contracts, and to give certain special considerations, assistance, and awards, whenever feasible, to small businesses and microbusinesses, among other requirements.

This bill would require each state agency, in order to encourage small business participation in new contracts over \$500,000 for the construction, alternation, demolition, repair or improvement of the state's infrastructure that is funded with proceeds from the federal Infrastructure Investment and Jobs Act (Act), to establish a 25% small business participation goal in all contracts that the agency finances with these proceeds. The bill would prescribe federal enactments that are deemed to be federal revenues from the Act for purposes of these provisions. The bill would require a state agency to notify the agency's small business liaison beginning April 1, 2023, of any anticipated contracting opportunities that will be paid with funding from the Act during the 12 months following that date and require its small business liaison to provide information to small businesses regarding available training and technical assistance that could assist the business in identifying, understanding, and bidding on contracts for projects funded through the agency with funding from the Act, as specified.

This bill would exempt a state agency from these requirements with regard to funding from the Act if the head of the state agency or their designee determines that federal requirements preclude small business procurement participation, as specified in these provisions, the bid issued by the state agency is required to include a disadvantaged business enterprise procurement participation requirement, or if compliance with these provisions would make the state's application for a competitive federal program less competitive than other eligible applicants, as provided. The bill would require the state agency to report these determinations to the Director of General Services in a manner to be determined by the department, in each instance when a determination is made. The bill would require each state agency that has awarded any contract financed with funding from the act to report to the Director of General Services statistics comparing the small business and microbusiness participation dollars for contracts funded by the Act to the total contract dollars funded by the Act, as provided.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 14838.1 of the Government Code is amended to read:

14838.1. (a) In order to encourage the participation of small businesses in the construction, alteration, demolition, repair, or improvement, of the state's infrastructure, as provided in the infrastructure-related bond acts of 2006, each state agency awarding contracts financed with the proceeds of these bonds shall do all of the following:

- (1) Establish a 25 percent small business participation goal in all contracts it financed with the proceeds of the infrastructure-related bond acts of 2006.
- (2) Advertise all upcoming opportunities to bid on contracts for projects funded by the infrastructure-related bond acts of 2006, described in subdivision (d), in the California State Contracts Register and include in the advertisement an internet link to information for prospective bidders, including, but not limited to, general bidding procedures and how to properly prepare a bid for those contracts.
- (3) Provide information to California small businesses regarding training and technical assistance that is available to assist these small businesses in understanding and bidding on contracts for projects funded by the infrastructure-related bond acts of 2006, described in subdivision (d).

(b) In order to encourage the participation of small businesses in the construction, alternation, demolition, repair, or improvement, of the state's infrastructure, as provided in the Infrastructure Investment and Jobs Act (Public Law 117-58), as described in subdivision (e), each state agency awarding new contracts over five hundred thousand dollars (\$500,000) that are financed, in whole or in part, with the proceeds of the act, shall do all of the following:

- (1) Establish a 25 percent small business participation goal in all contracts that it finances, in whole or in part, with these federal funds.
- (2) Beginning April 1, 2023, notify the agency's small business liaison, designated pursuant to Section 14846, of any anticipated contracting opportunities that will be paid, in whole or in part, with funding from the Infrastructure Investment and Jobs Act during the 12 months following April 1, 2023.
- (3) The agency small business liaison shall provide information to California small businesses regarding training and technical assistance that is available to assist them in identifying, understanding, and bidding on contracts for projects funded through the agency with Infrastructure Investment and Jobs Act funding, as described in subdivision (e).

(c) The requirements of subdivision (b) do not apply to funding from the Infrastructure Investment and Jobs Act if the head of the state agency or their designee makes one of the following determinations:

- (1) Federal requirements preclude small business procurement participation as required by this section.
- (2) The bid issued by the state agency is required to include a disadvantaged business enterprise procurement participation requirement.
- (3) In the case of competitively awarded funding from the federal government, if compliance with the requirements of this section would make the state's application for a competitive program less competitive than other eligible applicants.

(d) For purposes of this section, all of the following measures are deemed to be the infrastructure-related bond acts of 2006:

- (1) The Highway Safety, Traffic Reduction, Air Quality, and Port Security Bond Act of 2006 (Chapter 12.49 (commencing with Section 8879.20) of Division 1 of the Government Code).
- (2) The Housing and Emergency Shelter Trust Fund Act of 2006 (Part 12 (commencing with Section 53540) of Division 31 of the Health and Safety Code).
- (3) The Kindergarten-University Public Education Facilities Bond Act of 2006 (Part 69 (commencing with Section 101000) of the Education Code).
- (4) The Disaster Preparedness and Flood Prevention Bond Act of 2006 (Chapter 1.699 (commencing with Section 5096.800) of Division 5 of the Public Resources Code).
- (5) The Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Division 43 (commencing with Section 75001) of the Public Resources Code).

(e) For purposes of this section, funding awarded to the state from the following subtitles, titles, and divisions of the Infrastructure Investment and Jobs Act shall be deemed to be federal revenues:

- (1) Division A, the Surface Transportation Reauthorization Act of 2021 (23 U.S.C. Sec. 101 et seq.).
- (2) Division B, the Surface Transportation Investment Act of 2021 (49 U.S.C. Sec. 101 et seq.).
- (3) Division E, the Drinking Water and Wastewater Infrastructure Act of 2021 (33 U.S.C. Sec. 1251 et seq.).
- (4) Division F, Broadband (47 U.S.C. Sec. 1701 et seq.).
- (5) Title IX of Division G, the Build America, Buy America Act (41 U.S.C. Sec. 8301 et seq.).

(f) For purposes of this section, all of the following shall apply:

- (1) "Small business" has the same meaning as set forth in subdivision (d) of Section 14837.
- (2) "State agency" includes each agency provided for in Section 12800 and each state entity in Section 10335.7 of the Public Contract Code in which the head of the agency is appointed by the Governor.

(g) This section does not require the expenditure of the proceeds of the sale of the bonds described in this section, except as permitted by the measure authorizing the issuance of the bond.

(h) For purposes of subdivision (c), the Director of Transportation or their designee may make a determination that a class or category of contracts is exempt from the requirement of subdivision (b). Nothing in this subdivision shall be construed to require the head of the Department of Transportation or their designee to make a determination for each individual contract.

(i) (1) On or before August 1, 2009, and annually thereafter, each state agency that has awarded any contract financed with the proceeds of the infrastructure-related bond acts of 2006 or the Infrastructure Investment and Jobs Act in the previous fiscal year shall report to the Director of General Services statistics comparing the small business and microbusiness participation dollars for contracts funded by these bonds or federal dollars to the total contract dollars for contracts funded by these bonds or federal dollars.

(2) If an agency did not meet its participation goal, then the agency shall include in its report a plan of action to meet its participation goal during the current fiscal year. These reporting requirements do not supersede any other reporting requirements required of these funds.

(3) In each instance that the head of the state agency makes a determination pursuant to subdivision (c), the state agency shall report this determination to the Director of General Services in a manner to be determined by the department.