

AMENDED IN ASSEMBLY APRIL 9, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 608**

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**Introduced by Assembly Member De La Torre**

February 21, 2007

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An act to amend Section 14838 of the Government Code, relating to state contracting.

LEGISLATIVE COUNSEL'S DIGEST

AB 608, as amended, De La Torre. State contracting: small business preference.

The Small Business Procurement and Contract Act requires the directors of the Department of General Services and other state agencies entering into contracts for the provision of goods, information technology, and services to the state, and in the construction of state facilities, to provide for a preference up to and including 5%, ~~not to exceed \$50,000~~ for any bid, to small businesses and microbusinesses, or nonsmall businesses that provide for small business and microbusiness subcontractor participation, in solicitations where an award is to be made to the lowest responsible bidding meeting specifications. ~~The combined cost of preferences granted pursuant to this provision and any other provision of law may not exceed \$100,000, subject to specified criteria.~~

*This bill would increase the dollar amount of these limits to \$500,000 and \$1,000,000, respectively the maximum percentage of the bidding preference afforded by the directors of the Department of General Services and other state agencies to small businesses and microbusinesses, or nonsmall businesses that provide for small business and microbusiness subcontractor participation to 10%.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 14838 of the Government Code is  
2 amended to read:

3 14838. In order to facilitate the participation of small business,  
4 including microbusiness, in the provision of goods, information  
5 technology, and services to the state, and in the construction  
6 ~~(including, including~~ alteration, demolition, repair, or  
7 ~~improvement)~~ improvement, of state facilities, the directors of  
8 General Services and other state agencies that enter those contracts,  
9 each within their respective areas of responsibility, shall do all of  
10 the following:

11 (a) Establish goals, consistent with those established by the  
12 Office of Small Business Certification and Resources, for the extent  
13 of participation of small businesses, including microbusinesses,  
14 in the provision of goods, information technology, and services to  
15 the state, and in the construction of state facilities.

16 (b) Provide for small business preference, or nonsmall business  
17 preference for bidders that provide for small business and  
18 microbusiness subcontractor participation, in the award of contracts  
19 for goods, information technology, services, and construction, as  
20 follows:

21 (1) In solicitations where an award is to be made to the lowest  
22 responsible bidder meeting specifications, the preference to small  
23 business and microbusiness shall be ~~5~~ 10 percent of the lowest  
24 responsible bidder meeting specifications. The preference to  
25 nonsmall business bidders that provide for small business or  
26 microbusiness subcontractor participation shall be, up to a  
27 maximum of ~~5~~ 10 percent of the lowest responsible bidder meeting  
28 specifications, determined according to rules and regulations  
29 established by the Department of General Services.

30 (2) In solicitations where an award is to be made to the highest  
31 scored bidder based on evaluation factors in addition to price, the  
32 preference to small business or microbusiness shall be ~~5~~ 10 percent  
33 of the highest responsible bidder's total score. The preference to  
34 nonsmall business bidders that provide for small business or  
35 microbusiness subcontractor participation shall be up to a

1 maximum ~~5~~ 10 percent of the highest responsible bidder's total  
2 score, determined according to rules and regulations established  
3 by the Department of General Services.

4 (3) The preferences under paragraphs (1) and (2) ~~may shall~~ not  
5 be awarded to a noncompliant bidder and ~~may shall~~ not be used  
6 to achieve any applicable minimum requirements.

7 (4) The preference under paragraph (1) ~~may shall~~ not exceed  
8 fifty thousand dollars (\$50,000) for any bid, and the combined  
9 cost of preferences granted pursuant to paragraph (1) and any other  
10 ~~provision of law may shall~~ not exceed one hundred thousand  
11 dollars (\$100,000). In bids in which the state has reserved the right  
12 to make multiple awards, this fifty thousand dollar (\$50,000)  
13 maximum preference cost shall be applied, to the extent possible,  
14 so as to maximize the dollar participation of small businesses,  
15 including microbusiness, in the contract award.

16 (c) Give special consideration to small businesses and  
17 microbusinesses by both:

18 (1) Reducing the experience required.

19 (2) Reducing the level of inventory normally required.

20 (d) Give special assistance to small businesses and  
21 microbusinesses in the preparation and submission of the  
22 information requested in Section 14310.

23 (e) Under the authorization granted in Section 10163 of the  
24 Public Contract Code, make awards, whenever feasible, to small  
25 business and microbusiness bidders for each project bid upon  
26 within their prequalification rating. This may be accomplished by  
27 dividing major projects into subprojects so as to allow a small  
28 business or microbusiness contractor to qualify to bid on these  
29 subprojects.

30 (f) Small business and microbusiness bidders qualified in  
31 accordance with ~~the provisions of~~ this chapter shall have  
32 precedence over nonsmall business bidders in that the application  
33 of any bidder preference for which nonsmall business bidders may  
34 be eligible under this ~~provision subdivision~~ or any ~~other provision~~  
35 ~~of law~~ shall not result in the denial of the award to a small business  
36 or microbusiness bidder. In the event of a precise tie between the  
37 low responsible bid of a bidder meeting specifications of a small  
38 business or microbusiness, and the low responsible bid of a bidder  
39 meeting the specifications of a disabled veteran-owned small  
40 business or microbusiness, the contract shall be awarded to the

1 disabled veteran-owned small business or microbusiness. This  
2 provision *subdivision* applies if the small business or microbusiness  
3 bidder is the lowest responsible bidder, as well as if the small  
4 business or microbusiness bidder is eligible for award as the result  
5 of application of the small business and microbusiness bidder  
6 preference granted by subdivision (b).

7 ~~SECTION 1. Section 14838 of the Government Code is~~  
8 ~~amended to read:~~

9 ~~14838. In order to facilitate the participation of small business,~~  
10 ~~including microbusiness, in the provision of goods, information~~  
11 ~~technology, and services to the state, and in the construction,~~  
12 ~~including the alteration, demolition, repair, or improvement, of~~  
13 ~~state facilities, the directors of the Department of General Services~~  
14 ~~and other state agencies that enter those contracts, each within~~  
15 ~~their respective areas of responsibility, shall do all of the following:~~

16 ~~(a) Establish goals, consistent with those established by the~~  
17 ~~Office of Small Business Certification and Resources, for the extent~~  
18 ~~of participation of small businesses, including microbusinesses,~~  
19 ~~in the provision of goods, information technology, and services to~~  
20 ~~the state, and in the construction of state facilities.~~

21 ~~(b) Provide for small business preference, or nonsmall business~~  
22 ~~preference for bidders that provide for small business and~~  
23 ~~microbusiness subcontractor participation, in the award of contracts~~  
24 ~~for goods, information technology, services, and construction, as~~  
25 ~~follows:~~

26 ~~(1) In solicitations where an award is to be made to the lowest~~  
27 ~~responsible bidder meeting specifications, the preference to small~~  
28 ~~business and microbusiness shall be 5 percent of the lowest~~  
29 ~~responsible bidder meeting specifications. The preference to~~  
30 ~~nonsmall business bidders that provide for small business or~~  
31 ~~microbusiness subcontractor participation shall be, up to a~~  
32 ~~maximum of 5 percent of the lowest responsible bidder meeting~~  
33 ~~specifications, determined according to rules and regulations~~  
34 ~~established by the Department of General Services.~~

35 ~~(2) In solicitations where an award is to be made to the highest~~  
36 ~~scored bidder based on evaluation factors in addition to price, the~~  
37 ~~preference to small business or microbusiness shall be 5 percent~~  
38 ~~of the highest responsible bidder's total score. The preference to~~  
39 ~~nonsmall business bidders that provide for small business or~~  
40 ~~microbusiness subcontractor participation shall be up to a~~

1 maximum 5 percent of the highest responsible bidder's total score,  
2 determined according to rules and regulations established by the  
3 Department of General Services.

4 (3) The preferences under paragraphs (1) and (2) may not be  
5 awarded to a noncompliant bidder and may not be used to achieve  
6 any applicable minimum requirements.

7 (4) The preference under paragraph (1) may not exceed five  
8 hundred thousand dollars (\$500,000) for any bid, and the combined  
9 cost of preferences granted pursuant to paragraph (1) and any other  
10 provision of law may not exceed one million dollars (\$1,000,000).  
11 In bids in which the state has reserved the right to make multiple  
12 awards, this five hundred thousand dollar (\$500,000) maximum  
13 preference cost shall be applied, to the extent possible, so as to  
14 maximize the dollar participation of small businesses, including  
15 microbusiness, in the contract award.

16 (e) Give special consideration to small businesses and  
17 microbusinesses by both:

18 (1) Reducing the experience required.

19 (2) Reducing the level of inventory normally required.

20 (d) Give special assistance to small businesses and  
21 microbusinesses in the preparation and submission of the  
22 information requested in Section 14310.

23 (e) Under the authorization granted in Section 10163 of the  
24 Public Contract Code, make awards, whenever feasible, to small  
25 business and microbusiness bidders for each project bid upon  
26 within their prequalification rating. This may be accomplished by  
27 dividing major projects into subprojects so as to allow a small  
28 business or microbusiness contractor to qualify to bid on these  
29 subprojects.

30 (f) Small business and microbusiness bidders qualified in  
31 accordance with the provisions of this chapter shall have  
32 precedence over nonsmall business bidders in that the application  
33 of any bidder preference for which nonsmall business bidders may  
34 be eligible under this provision or any other provision of law shall  
35 not result in the denial of the award to a small business or  
36 microbusiness bidder. In the event of a precise tie between the low  
37 responsible bid of a bidder meeting specifications of a small  
38 business or microbusiness, and the low responsible bid of a bidder  
39 meeting the specifications of a disabled veteran-owned small  
40 business or microbusiness, the contract shall be awarded to the

1 ~~disabled veteran-owned small business or microbusiness. This~~  
2 ~~provision applies if the small business or microbusiness bidder is~~  
3 ~~the lowest responsible bidder, as well as if the small business or~~  
4 ~~microbusiness bidder is eligible for award as the result of~~  
5 ~~application of the small business and microbusiness bidder~~  
6 ~~preference granted by subdivision (b).~~

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