

ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Wright Analyst: Janet Jennings Bill Number: SB 1484
Related Bills: See Legislative History Telephone: 845-3495 Amended Dates: June 7, 2010, & June 14, 2010
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: State Agency Contracts/Prohibit Bundling Contracts

SUMMARY

This bill would prohibit the Director of General Services and the directors of other state departments or agencies from bundling contracts.

SUMMARY OF AMENDMENTS

The June 7, 2010, amendments removed language relating to gambling and added language relating to state agencies' contracting rules. The June 14, 2010, amendments changed the author. This is the department's first analysis of the bill.

PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to increase the number of contracts awarded to small business, micro business, or disabled veteran business enterprises by state agencies.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2011, and operative as of that date.

POSITION

Pending.

ANALYSIS

STATE LAW

As part of Executive Order S-02-06,¹ each agency secretary, department director, and executive officer is to ensure that the State's procurement and contracting processes are administered in order to meet or exceed the 25 percent small business participation goal.

¹ <http://www.documents.dgs.ca.gov/pd/smallbus/SBExecOrderS-02-06.pdf>

Board Position:

_____ S _____ NA _____ NP
_____ SA _____ O _____ NAR
_____ N _____ OUA X PENDING

Department Director

Date

Selvi Stanislaus

07/15/10

Military and Veteran Code Section 999.1, requires all departments to have annual statewide participation goals of not less than 3 percent for disabled veteran business enterprises (DVBE).

Prior to placing purchase orders under the California Multiple Award Schedules (CMAS) program, state agencies must, whenever practicable, first consider offers from small businesses and/or DVBEs that have established CMAS contracts.

State agencies are able to claim subcontracting dollars towards their small business or DVBE goals whenever the contractor subcontracts a commercially useful function to a certified small business or DVBE.

Public Contract Code section 10329 prohibits splitting a single purchase transaction into a series of transactions for the purpose of evading bidding requirements or circumventing dollar thresholds.

THIS BILL

This bill would prohibit the Department of General Services and all other state departments or agencies from bundling contracts. Additionally, state agencies would be unable to count subcontracting dollars toward their small business or DVBE goals.

This bill defines bundling as:

Solicitation for a single contract or a multiple award contract to satisfy two or more requirements of any state agency, department, board, or commission for goods that restrict competition or limits the number of suppliers by being likely unsuitable for award to a small business due to any one or more of the following:

- The diversity, size, or specialized nature of the elements of the performance specified.
- The aggregate dollar value of the anticipated award.
- The geographical dispersion of the contract performance sites.
- Restrictive contract requirements or any other similar procurement strategy or factors that limit the ability of a small business to compete as a prime contractor.

IMPLEMENTATION CONSIDERATIONS

This bill uses the term "goods," but fails to define the term. It is unclear if this bill includes information technology (IT) goods or services, or would apply only to non-IT goods. The State often includes both goods and services in a project related contract. The use of a single contract allows the State to hold a single vendor accountable for coordination, integration, and execution of all aspects of the project. This is primarily applicable in IT projects, but also applies to non-IT projects, such as installation of security systems or high volume mail processing equipment. The absence of clear definitions could complicate implementation of this bill.

LEGISLATIVE HISTORY

AB 31 (Price, Stats. 2009, Ch. 212) increased the maximum contract threshold amount for awards to small business, including microbusiness and DVBE, from \$100,000 to \$250,000 under the State's streamlined procurement process. This act requires contractors to report at the conclusion of the contract on the actual percent of the contract amount that was allocated to those entities.

ABX4 21 (Evans, Stats. 2009, Ch. 19) removed the "Good Faith Effort" method of meeting mandatory DVBE participation requirements and requires awarding departments to award contracts to the lowest responsible bidder meeting specific statewide participation goals for DVBE.

SB 548 (Huff, Stats. 2009, Ch. 595) requires a prime contractor to certify information pertaining to a contract with DVBE and imposes a civil penalty for false statements.

FISCAL IMPACT

- Leveraged Procurement Agreements (LPAs) allow departments to buy directly from suppliers through existing contracts and agreements. If LPAs are unavailable, it is estimated that, on average, staff would need to spend an additional four to eight hours per purchase, requiring approximately one additional personnel year, or approximately \$64,000.
- If the bill also applies to IT goods/services, the costs for both staff time and goods would be increased. It is estimated that, on average, staff would need to spend an additional eight to sixteen hours per purchase (higher than non-IT due to the additional specifications documentation required), approximately \$128,000, or two additional personnel years. If the department is unable to utilize leveraged procurement vehicles, an increase in costs may occur for the same IT goods.

In absence of clear language, it is assumed that this bill will apply to IT and non-IT goods and services. Therefore, staff estimates a total cost of approximately \$192,000 to implement the provisions of this bill. Due to the current fiscal environment and the need for increased resources necessary to implement other pending bills, implementation of this bill is contingent on funding. Accordingly, suggested language is provided in Amendment 1 to fund the department's implementation costs for this bill. If this bill is enacted without appropriation language, the department will pursue a budget augmentation ("legislative budget change proposal") through the normal budgetary processes, which would delay implementation of the bill's provisions to July 1, 2011. If approval of a legislative budget change proposal is denied, the department may be unable to implement the provisions of this bill.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenue.

POLICY CONCERNS

Absent the ability to count subcontractors, it is doubtful the Franchise Tax Board (FTB) would meet the mandated percentages for contracts awarded to small business or DVBE. Many FTB purchases are too large to go to a Small Business or DVBEs, with limited inventories; with incentives, preferences, and mandatory participation requirements, the department is able to encourage large businesses to engage Small Business and DVBEs, providing them business opportunities. In addition, this bill could have the unintended consequence of reducing business opportunities for Small Business and DVBEs because State Agencies would no longer have an incentive to require their inclusion as subcontractors. Currently, for example, if the department contracts with IBM to supply goods worth \$1 million, the contract can require IBM to commit to paying a DVBE a minimum of \$30,000 (3%) to perform a commercially useful function related to the purchase.

LEGISLATIVE STAFF CONTACT

Legislative Analyst

Janet Jennings

(916) 845-3495

janet.jennings@ftb.ca.gov

Revenue Manager

Monica Trefz

(916) 845-4002

monica.trefz@ftb.ca.gov

Asst. Legislative Director

Patrice Gau-Johnson

(916) 845-5521

patrice.Gau-johnson@ftb.ca.gov

Analyst	Janet Jennings
Telephone #	(916) 845-3495
Attorney	Pat Kusiak

FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 1484
As Amended June 14, 2010

Amendment 1

On page 3, after line 7, insert:

Sec.2. The sum of one hundred ninety thousand dollars (\$190,000) is hereby appropriated to the Franchise Tax Board in augmentation of item 1730-001-0001 of the Governor's Budget Chapter XX, Statutes of XXXX.