

Date of Hearing: April 24, 2012

ASSEMBLY COMMITTEE ON BUSINESS, PROFESSIONS AND CONSUMER
PROTECTION

Mary Hayashi, Chair

AB 2426 (Galgiani) – As Amended: March 29, 2012

SUBJECT: Public contracts: veterans preference.

SUMMARY: Grants a 5% bid preference for state public works projects to contractors who hire veterans registered with the federal Helmets to Hardhats (H2H) Program. Specifically, this bill:

- 1) Grants a 5% bid preference to contractors who hire veterans in the H2H program for state public works projects procured using lowest bidder or lowest responsible bidder.
- 2) Allows a bidder to qualify for the bid preference if:
 - a) The bidder or subcontractor utilized H2H in the year preceding the bid submission; and,
 - b) The bidder and listed subcontractors each qualify for the bid, and each certify in writing that they qualify.
- 3) The bid preference shall be calculated by reducing the bid of the lowest responsible bidder, for purposes of comparing the bid with competing bids.
- 4) Requires a bidder or subcontractor receiving a bid preference to use H2H for at least a year after bid acceptance.
- 5) Imposes a civil penalty of \$2,500 per violation, with a maximum amount of \$25,000, against a bidder who knowingly certifies false information. Authorizes any public prosecutor to bring a civil action to enforce these provisions.
- 6) Requires a winning bidder, at a state agency's request, to provide written proof that the bidder is entitled to the bid preference. If proof is not submitted, the preference will be denied.
- 7) Allows a winning bidder who is denied the bid preference because a listed subcontractor failed to establish entitlement to a bid preference, to substitute a subcontractor within 14 days. Requires the original subcontractor to pay the winning bidder any reasonable cost increase in hiring a new subcontractor.
- 8) Defines "Helmets to Hardhats" to mean the Center for Military Recruitment, Assessment, and Veterans Employment program administered by the Department of Defense.
- 9) Makes legislative findings and declarations related to the use of military veterans in the construction industry.

EXISTING LAW:

- 1) Requires the Department of General Services (DGS) to administer the state Small Business Procurement and Contract Act (Small Business Act), including a small business certification process and a streamlined procurement process for state contracts under \$100,000 that is exempt from advertising, bidding, and protest provisions in the State Contract Act. (Government Code, commencing with Section 14835)
- 2) Establishes a 5% bid preference for certified small businesses and microbusinesses for state contracts made either on the basis of lowest responsible dollar bid or on the basis of highest score, with a single bid preference limit of \$50,000. Caps the aggregate amount of bid preferences for a single bid at \$100,000. (Government Code Section 14838)
- 3) Establishes a variable bid preference up to 15% for contractors hiring individuals from enterprise zones in a targeted employment area, with a single bid preference limit of \$50,000. Caps the aggregate amount of bid preferences for a single bid at 100,000. (Government Code Section 7084)
- 4) Defines a "small business" to mean an independently-owned business that is not dominant in its field of operation, domiciled in California, employs 100 or fewer employees, and has earned \$10 million or less in average annual gross revenues for the previous three years. (Government Code Section 14837)
- 5) Establishes the California Disabled Veteran Business Enterprise (DVBE) Program, and defines a "disabled veteran" to mean a veteran, as specified, who has at least a 10% service-connected disability and who is domiciled in the state, and a "DVBE" to mean a business that is majority-owned by disabled veterans. (Military & Veterans Code Section 999).

FISCAL EFFECT: Unknown

COMMENTS:

Purpose of this bill. According to the author's office, "There are a tremendous number of returning veterans who are seeking jobs in this economic downturn. The unemployment rate in California is extremely high. AB 2426 would help lower the unemployment level for returning veterans while stimulating the economy.

"Not many people are comfortable with the process of transitioning from the military to the civilian workforce... The process can feel overwhelming, especially if it seems like meaningful help is unavailable. H2H was formed for this reason and is dedicated to helping the National Guard, [Military] Reserve, retired, and transitioning active-duty military members connect to quality career and training opportunities in one of America's most challenging and rewarding industries – the construction industry. H2H makes the connection between the career providers and the candidates that apply for their career opportunities."

Background. This bill would establish a 5% bid preference for contractors who hire veterans in the federal H2H program for state public works projects. The H2H program is administered by a non-profit organization that transitions military veterans into the construction workforce with job training and assistance. H2H is a Web-based program that requires online registration and provides online job postings. Veterans are connected to regional directors and volunteers who assist veterans with job training and applications.

Existing law allows for a 5% bid preference for small businesses and up to \$50,000, and a variable bid preference up to 15% for contractors hiring individuals from enterprise zones in a targeted employment area. Existing law also allows a 5% bid incentive for DVBEs. Existing law caps an individual bid preference at \$50,000, and multiple bid preferences at \$100,000. (Government Code Section 14838) DVBEs receive an incentive, not a preference.

A bid incentive is calculated based on the percentage of DVBE participation and a bid price is lowered by the incentive amount for evaluation purposes when awarding contracts to the lowest price or lowest responsible bidder. A bid incentive can vary from 1% to 5%, depending on the level of DVBE participation. A bid incentive is calculated based on incentive points when contracts are awarded to the highest scoring bidder. According to DGS, the incentive differs from any preference in that it cannot be used to displace a bidder that would have won a contract award with a preference, and it does not have a capped value.

According to DGS, a bidder with a preference may displace a bidder with an incentive. Thus, a DVBE without a preference may displace a non-DVBE with the preference. (It is important to note that DVBEs would be eligible to obtain both their incentive and their preference.)

"Utilization" of the H2H program is vague. If reducing veteran unemployment is the goal, only those who actually hire veterans should receive the preference. Moreover, it would increase the effectiveness of this proposal to graduate the preference points so that those who hire more veterans get greater preference, up to the cap.

H2H is a national program. As worded, the bill does not require that the program be "utilized" in California. Thus veterans could be hired and working in another state yet still be used to qualify the bidder for the preference.

Suggested Author Amendments.

1. Alter the preference to allow more preference points for those who hire more veterans.
2. Clarify that "utilization" means that veterans must actually be employed.
3. Require that preference recipients hire veterans domiciled in California.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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