

REPORT OF THE
OFFICE OF THE AUDITOR GENERAL
TO THE
JOINT LEGISLATIVE AUDIT COMMITTEE

268

NEED FOR IMPROVEMENT IN
THE STATE'S SMALL BUSINESS
PROCUREMENT AND CONTRACT PROGRAM

- -

DEPARTMENT OF GENERAL SERVICES

APRIL 1976



Joint Legislative Audit Committee

OFFICE OF THE AUDITOR GENERAL

California Legislature



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April 20, 1976

The Honorable President pro Tempore of
the Senate
The Honorable Speaker of the Assembly
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

The California Small Business Procurement and Contract Act became law in early 1974. The Auditor General report contains an erudite exposition by the Director of General Services of progress under the Act.

The Auditor General, however, views with alarm and describes significant shortcomings, which, unless corrected by November, could be good and sufficient reasons for terminating the program.

The challenge of the Auditor General with its acceptance by the Director is refreshing.

The auditors are Glen H. Merritt, Audit Manager; Gerald A. Silva; Thomas P. Friery; Eugene T. Potter; and Dennis L. Sequeira.

Respectfully submitted,

MIKE CULLEN, Chairman
Joint Legislative Audit Committee

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SUMMARY

The small business program established by the Department of General Services has not fully accomplished the intent of the Small Business Procurement and Contract Act. Unless substantial improvements are made in the program, the value of its continuation is questionable.

Findings

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The Small Business Procurement and Contract Act states that it is the declared policy of the Legislature that the State should aid, counsel, assist and protect, insofar as possible, the interests of small business concerns.

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The Act required the Director to establish a detailed definition of small businesses on an industry-to-industry basis and provide a five percent price preference to small businesses bidding on state purchases and contracts, when responsibility and quality are equal.

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During 1975, \$16,745, or 14 percent of the total price preference allowed on contracts awarded by the Office of Procurement, went to vendors who were not small businesses as defined by the Director of General Services. An additional \$33,444, or nearly 28 percent of the total price preference allowed, went to vendors

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Since its inception in May 1974, the Small Business Program has cost the State of California nearly \$1 million in budgeted operating costs, small business price preferences, and additional costs incurred for the program by other offices and departments.	29

Recommendation

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We recommend that the Senate Finance Committee and the Assembly Ways and Means Committee require the Director of General Services to develop and report to the Legislature by November 1, 1976 a plan of action to improve the small business program so that it will accomplish the intent of the Legislature. If the Director's report is not received by that date, all funding of the small business program should be terminated on January 1, 1977.

The Director's plan should, at a minimum, address the above findings.

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INTRODUCTION

In response to a legislative request, we have reviewed the operations of the Office of Small Business Procurements and Contracts within the Department of General Services.

The Office was established by the Small Business Procurement and Contract Act and began operations in May 1974. The 1975-76 budget included 11 full-time positions.

The Office has expressed its key objective as:

To promote and facilitate the fullest possible participation of small business in our free enterprise program and to aid, assist, and protect insofar as possible, the interest of small business concerns in order to preserve free competitive enterprise and to ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the State be placed with small business enterprises.

The Act also provided for a small business price preference of up to five percent to be granted to small businesses competing for purchases or contracts from the Office of Procurement and the Office of Architecture and Construction. The Small Business Office is not authorized to make purchases.

From May 1, 1974 to February 29, 1976, the Office of Procurement issued \$196,086,947 of purchase orders of which 18.0 percent or \$35,251,661 was awarded to small businesses. During that same period the Office of Procurement granted \$267,653 in small business price preferences on \$8,914,052 worth of small business purchase orders and contracts.

From May 1, 1974 to February 29, 1976, the Office of Architecture and Construction issued 505 contracts totaling \$79,105,753. Small businesses received 44 of these contracts totaling \$11,118,659. Of the 44 small business awards by the Office of Architecture and Construction only 12 were awarded based on the small business price preference. These awards total \$7,297,495 and the dollar value of the preferences granted is \$205,759. The remaining small business awards of \$3,821,164 were the result of the small business being the lowest bidder.

FINDINGS

LEGISLATION TO AID SMALL BUSINESSES
AND INCREASE THEIR OPPORTUNITIES FOR
PARTICIPATION IN STATE CONTRACTS HAS
NOT BEEN EFFECTIVELY IMPLEMENTED.

The small business program established by the Department of General Services to implement the Small Business Procurement and Contract Act (Section 14835 et seq. of the Government Code) has not fully accomplished the intent of the Act. The most critical deficiency has been the granting of up to \$166,710 in small business price preferences to vendors and contractors that do not, or may not, qualify. Our analysis shows that this program has not had a significant impact on the pattern of state purchases from small businesses or and on the small business community as a whole. Unless substantial improvements are made in the program, the value of its continuation is questionable.

Legislative Intent as Expressed in
the Small Business Procurement and
Contract Act

On October 2, 1973, the Governor signed into law the Small Business Procurement and Contract Act. (Appendix A) This Act states that it is the declared policy of the Legislature that the State should aid, counsel, assist and protect, insofar as possible, the interests of small business concerns. The Legislature wanted to preserve free competitive enterprise and to ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the State are

placed with small business enterprises. The Act defined a small business as a business which is independently owned and operated and which is not dominant in its field of operation.

To ensure that this legislative intent was carried out, the Legislature established the Office of Small Business Procurements and Contracts (Small Business Office) in the Department of General Services. The Small Business Office was to:

- Compile and maintain a comprehensive bidders' list of qualified small businesses
- Coordinate activities with the Federal Small Business Administration the Office of Minority Business Enterprises, and the Executive Board of the California Job Development Corporation
- Assist small businesses to comply with bidding procedures on state contracts
- Work with appropriate state, federal and private organizations to disseminate information on bidding procedures and small business opportunities for state contracts
- Assist state agencies to determine which bid invitations are to be designated for small business preference
- Make recommendations to the Department and other state agencies to increase the opportunities for small business participation by simplifying specifications and terms.

In addition, the Department of General Services and its Director were to:

- Establish a detailed definition of small businesses on an industry-to-industry basis setting the criteria for maximum number of employees and maximum dollar volume
- Establish goals for the extent of participation of small businesses in state procurement and construction contracts
- Provide a five percent price preference to small businesses bidding on state purchases and contracts, when responsibility and quality are equal
- Give special consideration to small businesses by reducing the "experience" and "level of inventory" required for qualification
- Give special assistance to small businesses in the preparation of questionnaires and financial statements required with bids.

Since 1975, the Department has been required to submit, on January 1 of each year, an annual report containing information regarding the number of eligible small business vendors and the commodities they supply, the volume of purchase and contract awards made to small businesses, and any recommendations for changes in statutes or state policies to improve opportunities for small businesses. In addition, the Department was required to submit to the Legislature no later than January 1, 1976 a

comprehensive evaluation of the Act with recommendations for modification and expansion of the Act to other state agencies. The Department has the authority to make all rules and regulations necessary to implement the Act.

The rules, regulations and definitions established by the Director to implement the Act are set out in Subchapter 8 of Title 2 of the California Administrative Code. (Appendix B)

Program Implemented Has Not Fully
Accomplished the Intent of the Act

Of the requirements imposed by the Act on the Director, the Department of General Services and the Small Business Office, few have been effectively implemented. Perhaps the most critical deficiency has been the granting of the small business price preference to vendors and contractors that do not or may not qualify. This occurred primarily because of the failure to establish an adequate definition of what a small business is and to establish effective procedures to assure that only qualified small businesses receive the permissible small business price preference of up to five percent.

These and other problems are discussed below.

Granting of Small Business Price
Preference to Unqualified Businesses

During 1975, \$16,745, or 14 percent of the total price preference allowed on contracts awarded by the Office of Procurement, went to vendors who were not small businesses as defined by the Director of

General Services. An additional \$33,444, or nearly 28 percent of the total price preference allowed, went to vendors who may not be small businesses because of questions regarding (1) affiliation with other vendors, (2) classification as manufacturer or nonmanufacturer, or (3) independent ownership and operation.

Of the amount that has been allowed for small business price preference by the Office of Architecture and Construction since the inception of the small business program, \$116,521, or nearly 57 percent, was given to contractors who may not be small businesses.

Small business vendors received \$166,847* in small business price preference on \$4,890,408 of purchase orders and contracts issued by the Office of Procurement during calendar year 1975. Nearly 72 percent, or \$120,079, went to only 65 vendors. These 65 vendors are those who received at least one purchase order or contract in excess of \$10,000 during 1975 where the small business price preference was the determining factor.

As of February 29, 1976, the Office of Architecture and Construction had issued 12 contracts where the small business price preference determined the award. These contracts totaled \$7,297,495 and the cumulative dollar amount of the small business bidding preferences granted was \$205,729*.

* This represents the difference between the actual low bid and the bid of the vendor that was awarded the bid because of the small business preference.

TABLE 1

SUMMARY OF SMALL BUSINESS STATUS OF VENDORS WHO RECEIVED AT LEAST ONE PURCHASE ORDER OR CONTRACT IN EXCESS OF \$10,000 DURING 1975 WHERE THE SMALL BUSINESS PRICE PREFERENCE WAS THE DETERMINING FACTOR

<u>Small Business Status</u>	<u>Number of Vendors</u>	<u>Dollar Volume of Awards Under the Small Business Preference During 1975</u>	<u>Dollar Value of Small Business Price Preference*</u>	<u>Percent of Total Price Preference</u>
Bona Fide Small Businesses According to Available Documentation (Appendix C)	8	\$ 881,532	\$ 26,898	22.4%
Bona Fide Small Business in 1975, but Exceeded Criteria During 1975 and Will Not Be Eligible After 1/1/76 (Appendix H)	2	134,431	3,851	3.2
(Subtotal - Bona Fide)	(10)	(1,015,963)	(30,749)	(25.6)
Not Small Business According to Available Documentation (Appendix D)	7	516,893	16,745	14.0
Questional Because of Affiliation with Other Vendors (Appendix E)	12	699,422	21,774	18.1
Questionable Because of Status as a Manufacturer (Appendix F)	3	67,070	2,364	2.0
Questionable Because of Status as a Manufacturer's Representative (Appendix G)	8	340,529	9,306	7.7
(Subtotal - Questionable)	(23)	(1,107,021)	(33,444)	(27.8)
Financial Information Not Available:				
Sales Estimated at More than \$750,000 Per Year (Appendix I)	7	224,723	7,983	6.6
Sales Estimated at Less Than \$750,000 Per Year (Appendix I)	8	256,639	6,866	5.7
No Estimate of Sales Available (Appendix I)	3	599,608	14,229	11.9
Financial Information Not Obtained -- Out-of-State Vendor; Will Not Be Eligible After 1/1/76 (Appendix H)	7	324,758	10,063	8.4
(Subtotal - Information Not Available or Obtained)	(25)	(1,405,728)	(39,141)	(32.6)
Totals	<u>65</u>	<u>\$4,045,605</u>	<u>\$ (120,079)</u>	<u>100.0%</u>

* This represents the difference between the actual low bid and the bid of the vendor that was awarded the bid because of the small business preference.

We independently verified 58 of these 65 vendors, as well as the 12 contractors, using Dun & Bradstreet reports to determine if they were small businesses as defined by the Director of General Services. We did not verify the small-business status of seven out-of-state vendors who will not be eligible for the small business price preference after January 1, 1976 (Stats. 1975, Ch. 308 -- see Appendix M).

Of the 58 vendors verified, only 10 were clearly small businesses; seven definitely were not small businesses; twelve may not be small businesses because of questions regarding affiliation with other vendors; three may not be small businesses because of questions regarding their status as a manufacturer; eight may not be small businesses because of questions regarding independent ownership and operation; and for eighteen, a definite determination could not be made based on the Dun & Bradstreet reports.

Table 1 summarizes the small business status of the 65 vendors that received at least one purchase order or contract in excess of \$10,000 during 1975 where the five percent price preference was the determining factor.

Of the 12 contractors we verified, seven were clearly small businesses and five may not be small businesses as defined by the Director of General Services. Table 2 on page 10 summarizes the small business status of the 12 contractors that have been granted small business price preferences by the Office of Architecture and Construction.

TABLE 2
 SUMMARY OF SMALL BUSINESS STATUS OF
 CONTRACTORS THAT HAVE BEEN GRANTED
 SMALL BUSINESS PRICE PREFERENCE BY
THE OFFICE OF ARCHITECTURE AND CONSTRUCTION

<u>Small Business Status</u>	<u>Number of Contractors</u>	<u>Dollar Volume of Awards Under the Small Business Preference During 1975</u>	<u>Dollar Value of Small Business Price Preference*</u>	<u>Percent of Total Price Preference</u>
Bona Fide Small Businesses According to Available Documentation	7	\$2,500,993	\$ 89,208	43.4%
Questionable Because of Possible Affiliation with Other Contractors (See Appendix J)	4	4,527,502	113,882	55.3
Questionable Because Dollar Volume Possibly Exceeds the Criteria Established by the Director (See Appendix J)	<u>1</u>	<u>269,000</u>	<u>2,639</u>	<u>1.3</u>
Totals	<u>12</u>	<u>\$7,297,495</u>	<u>\$205,729</u>	<u>100.0%</u>

* This represents the difference between the actual low bid and the bid of the vendor that was awarded the bid because of the small business preference.

Inadequate Definition of "Small Business"

The Small Business Procurement and Contract Act required the Director of General Services to define in detail "small business" setting the criteria for number of employees and dollar volume of business on an industry-to-industry basis. The definition also had to maintain the concept of a small business being independently owned and operated and not dominant in its field of operation. However, the definition established by the Director does not adequately address the issues of independent ownership and operation, and of criteria for different industries. (See Appendix B)

- Independent Ownership and Operation --
Affiliation

Under the Director's definition, a concern shall not qualify as a small business if it is an affiliate of another concern that would not qualify as a small business, or if the two concerns combined would not qualify as a small business.

The Director's definition provides that concerns are affiliates of each other when either directly or indirectly, (1) one concern controls or has the power to control the other or (2) a third party controls or has the power to control both. When evaluating whether concerns are independently owned and operated or if they are affiliated, consideration is to be given to common ownership, common management and contractual relationships.

This vague and nebulous definition of affiliation has created administrative problems for the Small Business Office, the Office of Procurement and the Office of Architecture and Construction. In fact, an attorney for one vendor stated that his client could not fraudulently claim to be a small business because affiliation is so ill-defined. The attorney for the vendor said in part,

...Since the question of affiliation is a subtle and to a large extent subjective issue [the vendor] should not be treated as if they knowingly set out to commit fraud....

...Despite intimations in your letter that [the vendor] committed perjury in asserting the small business preference, we wish to assure you that the claim was made in the utmost good faith...That the Small Business Office had to refer the matter to its own staff counsel for opinion is ample evidence that the issue is debatable at the least and that [the vendor] did not willfully state facts known to be false, which is the key element of perjury....

...We hope you will...conclude that "affiliation" is an extremely flexible and debatable concept....

The Small Business Office originally determined that this vendor was ineligible for the small business price preference because of affiliation with other companies. They later reversed their decision after the matter was discussed with the State Attorney General's Office. A Deputy Attorney General expressed the opinion that although the Small Business Office may have been warranted in declaring the vendor ineligible, it would be exceedingly difficult to substantiate the ineligibility in a courtroom.

This case illustrates the administrative problems the current definition of affiliation has created for the Small Business Office and the Office of Procurement. The Director of General Services acknowledges that the current definition regarding affiliation is inadequate, and intends to deal with the issue at a later date.

- Independent Ownership and Operation --
Sales Representatives of Large Companies

The current definition of small business has created another administrative grey area regarding manufacturers' representatives. Specifically, is a vendor who represents a large company independent?

The Small Business Office policy is that when a firm represents a principal in an "agency capacity" and also distributes the principal's products, the agency relationship pervades all transactions and is therefore considered tantamount to affiliation.

"Agency capacity", however, is not defined. Without such a definition, any decisions regarding price-preference eligibility of a manufacturer's representative will be arbitrary.

The pivotal point deciding the independence of manufacturers' representatives has been whether the manufacturer's representative takes title to the goods sold to the State. In a letter to the Chief of the Small Business Office, a manufacturer's representative stated his business was independently owned and operated because:

...In our bid transactions with the State of California, as we are directly supplying merchandise to the end user and assuming financial responsibility to the fabricator as buyer of his products, we are, as near as we can determine, retailing goods to the state....

A key question that the Small Business Office apparently did not ask was when did the business take title to the goods sold to the State. If title is taken after a sale, the business does not assume any of the custodial responsibilities for inventory that the typical retailer assumes; transfer of title then is only a technical point used to circumvent the intent of the small business program.

- Criteria for Different Industries

The Director of General Services has established the following criteria for number of employees and dollar volume limits for classification as a small business. For purchases by the Office of Procurement, "nonmanufacturers" are restricted to 25 employees and annual receipts of not more than \$1 million; "manufacturers" are restricted to 50 employees and annual receipts of not more than \$5 million. General engineering or construction businesses bidding on contracts awarded by the Office of Architecture and Construction are restricted to gross receipts of \$2 million for the preceding three years; specialty contractors are restricted to gross receipts of \$1 million for the preceding three years.

The above definitions do not satisfy the intent of the Small Business Procurement and Contract Act. The Act specifically requires the Director to define small businesses on an industry-to-industry

basis setting the criteria for number of employees and dollar volume of business. In comparison, the Federal Small Business Administration has categorized manufacturing industries into 33 major groups with 316 different classifications; wholesalers and retailers are categorized into seven major groups with 51 different classifications.

The absence of detailed definitions of small businesses on an industry-to-industry basis, as with affiliations and manufacturers' representatives, has created administrative problems for the Small Business Office and the Office of Procurement. For example, does a construction contractor manufacture sand, asphalt base or asphalt concrete? Does a meat processor manufacture meat? Does a dairyman manufacture milk?

To deal with meat processors and administer the small business price preference, the Office of Procurement developed its own definition of manufacturer. (See Appendix K)

For the dairy industry the problem of whether the vendor "manufactures" the product has not been resolved. On February 10, 1976, the Purchasing Manager for the Office of Procurement sent a memorandum to the Chief of the Small Business Office, stating:

...We have been receiving numerous bids on fluid milk and milk by-products, whereby, the bidder is claiming small business preference as a "manufacturer." There is a great deal of confusion as to the meaning of a manufacturer when applied to agricultural products since the classic definition does not apply.

However, until a definition of a manufacturer, as applied on fluid milk and milk by-products, can be specifically established, our office has no means of determining whether a bidder qualifies for preference under this classification. Any rejections for such preferences would be arbitrary without any existing criteria....

The small business price preference is a tremendous advantage in the dairy industry because the minimum price for fluid milk and some milk by-products is controlled by the Department of Agriculture. Often this results in identical bids being submitted by several vendors. When this happens the price preference is the determining factor in awarding the contract. In effect, any dairy industry vendor that does not receive the small business price preference is eliminated from competing for state contracts.

The Director acknowledges that the current definition of small businesses does not satisfy the intent of the Small Business Procurement and Contract Act. He stated that the current criteria were established by the prior administration and, because of priorities, he has not had time to correct the situation.

Ineffective Procedures to Assure that
Only Qualified Small Businesses Receive
the Small Business Price Preference

The Small Business Office does not have an established program to verify the small business status of vendors that are awarded purchase orders or contracts because of the small business price preference. Also,

the Department has not enacted a penalty procedure for businesses that falsely claim to be small businesses.

As of March 25, 1976, the Small Business Office had performed formal verifications of 60 vendors.* The Office initiated five of these verifications; the other 55 were prompted by competitors, the Office of Procurement, or the Office of Architecture and Construction.

The Small Business Office determined that 26** of the 60 vendors were not small businesses. Only six of the 26 vendors were penalized. The penalties included a 90-day suspension from the State's bid list plus either a cancellation of the order, a return of the small business price preference, or the imposition of a monetary penalty to reimburse the State for repurchasing costs. The remaining 20 vendors were not penalized because either (1) the purchase was not made until after the verification, or (2) the vendor was the low bidder without the small business price preference.

The current practice of penalizing vendors that erroneously claim to be small businesses was developed informally by the Office of Procurement, since no formal penalty procedures were prescribed in either the law or administrative regulations. The integrity of the small business program is dependent upon strict enforcement of the small business concept.

* In a procedure to identify new small businesses, the Small Business Office has mailed several hundred questionnaires to potential small businesses that received purchase orders from the Office of Procurement. Although about half of those surveyed have subsequently been added to the list of eligible small businesses, the Small Business Office has not identified the commodities supplied by those businesses. The significance of this deficiency is discussed on page 22.

** Two of the Small Business Office verifications initially were deficient. Before the Office later found them to be ineligible, these businesses received 11 price preference awards to which they were not entitled on \$23,582 of purchases. Price preferences of \$533 which were granted on these purchases were never recovered.

In our verification of the small business status of selected vendors and contractors, we relied on Dun & Bradstreet reports of annual sales and number of employees. These reports have certain limitations, however. For example, annual sales and number of employees are sometimes estimated in the Dun & Bradstreet reports. Also, the Dun & Bradstreet definitions and calculations of annual sales and number of employees do not conform with the definitions of "annual receipts" and "number of employees" established by the Director of General Services.

The Director defines annual receipts as:

...The gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived...for its most recently completed fiscal year... and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes....

A more definitive determination of small-business eligibility could be made if Federal income tax returns were required from vendors and contractors claiming to be small businesses.

Untimely and Inaccurate Reports to the
Legislature on the Small Business Program

The Department of General Services is required to submit to the Legislature, no later than January 1, of each year, a report on:

- the number of eligible small businesses by general procurement and construction contract category
- the volume of purchase and contract awards to small businesses
- recommendations for changes in statutes or policies to improve opportunities for small businesses.

The report due January 1, 1976, was submitted to the Legislature on March 29.

The Department was also required to submit to the Legislature no later than January 1, 1976 a comprehensive evaluation of the Small Business Procurement and Contract Act with recommendations for the modification and expansion of the Act to other state agencies. As of March 31, the Department had not submitted this report to the Legislature. Furthermore, the statistical data developed by the Department for the annual report overstates the volume of purchase and contract awards made to small businesses by up to \$15,962,812, or 38 percent. The Legislature is not receiving accurate or timely information or recommendations for improving the Small Business Program.

The report submitted to the Legislature by the Small Business Office on March 29 includes a list of formal bid awards to small businesses during the year ending October 31, 1975. This list shows the firm names, purchase order dates, dollar amounts of the purchase orders, and the products supplied. The total dollar amount of these purchases from

1,616 vendors was \$39,148,129. In addition, the Small Business Office listed \$2,497,891 of informal purchases from 2,990 small business vendors. Total small business volume for the year ending October 31, 1975, as reported by the Small Business Office, was \$41,646,020.

Fifteen of the vendors on the above lists do not meet the requirements for small businesses. These 15 vendors received \$10,300,738 in awards during the period.*

An additional 34 vendors listed may not be small businesses because of affiliation with other vendors, their status as a manufacturer, or their lack of independent ownership and operation. These 34 vendors received \$5,662,074 in awards during the period.

Thus, the dollar volume of small business purchase order and contract awards, as developed by the Small Business Office for the year ending October 31, 1975, was overstated by at least \$10,300,738 and perhaps by as much as \$15,962,812, or 38 percent of the \$41,646,020 total.

Program Implemented Has Not Had a Significant Impact on Small Businesses

The activities of the Small Business Office have not had a significant impact on Office of Procurement purchases from small businesses or on the small business community as a whole.

* The report submitted to the Legislature on March 29 includes at the front a "DISCLAIMER" that states one contract for \$6,767,000 was entered in error and should be deleted. This contract was one of the 15 disclosed by our review and had been discussed with officials of the Small Business Office prior to their issuance of the report.

In 1975, nearly 83 percent of the purchase order dollars awarded by the Office of Procurement because of the small business price preference went to only 65 vendors. These 65 vendors received a total of \$120,079 in small business price preference dollars during 1975, or nearly 72 percent of the \$166,847 total granted during 1975. (See Table 1, page 8)

The Small Business Office reported to the Legislature on March 29, 1976 total small business volume of \$41,646,020 for the year ending October 31, 1975. Of these awards, 63 percent, or \$26,356,499, went to only 65 vendors. These businesses transacted more than \$100,000 in business with the Office of Procurement or the Office of Architecture and Construction during the year ending October 31, 1975. Of these 65, two* were definitely not small businesses. These two vendors, which received nearly 18 percent, or \$7,374,000 of the small business awards reported for the year ending October 31, 1975, have never requested to be designated small businesses. The Small Business Office was unable to explain why these two vendors were included on their list of small business awards.

The remaining 63 vendors received \$18,982,499 in purchase awards and contracts for the year ending October 31, 1975. Of these 63 vendors, 52 were bidding on purchase orders and contracts issued by the Office of Procurement or the Office of Architecture and Construction prior to the inception of the small business program. Of the remaining 11 vendors, only one credited the Small Business Office with helping it to become established to bid on purchase orders and contracts issued by the Office of Procurement or the Office of Architecture and Construction.

* One of these was the contractor included in the "DISCLAIMER" to the report submitted to the Legislature by the Small Business Office. See footnote on page 20.

This vendor received \$100,239 in bid awards, or only half of one percent of the total dollars awarded to these 63 vendors during the year ending October 31, 1975.

According to records maintained by the Office of Procurement, the relative percentage of purchase order dollars issued to small businesses has not increased appreciably since the Small Business Office began operations in May 1974. For example, in July 1974, small businesses received 21.3 percent of the purchase order dollars issued by the Office of Procurement and in February 1976 small businesses received 20.4 percent of the purchase order dollars issued by the Office.

Table 3 shows the relative small business percentage of purchase order dollars issued by the Office of Procurement from May 1974 to February 1976.

TABLE 3
RELATIVE SMALL BUSINESS PERCENTAGE OF
PURCHASE ORDER DOLLARS ISSUED BY THE
OFFICE OF PROCUREMENT FROM MAY 1974 TO FEBRUARY 1976

<u>Month</u>	<u>Total Purchase Order Dollars Issued by the Office of Procurement</u>	<u>Purchase Order Dollars Issued to Small Businesses</u>	<u>Relative Percentage of Purchase Order Dollars Issued to Small Businesses</u>
May and June 1974	\$18,858,742	\$3,208,623	17.0%
July 1974	8,764,454	1,869,075	21.3
August 1974	9,090,509	1,904,967	21.0
September 1974	9,967,104	1,865,113	18.7
October 1974	7,929,044	862,448	10.9
November 1974	12,860,982	996,787	7.8
December 1974	8,051,418	1,222,782	15.2
January 1975	8,234,672	1,480,211	18.0
February 1975	7,171,482	1,660,851	23.2

<u>Month</u>	<u>Total Purchase Order Dollars Issued by the Office of Procurement</u>	<u>Purchase Order Dollars Issued to Small Businesses</u>	<u>Relative Percentage of Purchase Order Dollars Issued to Small Businesses</u>
March 1975	\$ 9,733,154	\$2,113,350	21.7%
April 1975	7,563,038	1,436,918	19.0
May 1975	8,182,199	1,640,528	20.0
June 1975	21,267,645	3,358,153	15.8
July 1975	9,260,372	1,876,926	20.3
August 1975	5,952,478	1,723,783	29.0
September 1975	6,491,559	1,210,740	18.7
October 1975	6,872,821	1,921,333	28.0
November 1975	4,964,636	1,316,835	26.5
December 1975	13,881,521	1,203,464	8.7
January 1976	5,972,048	1,357,596	22.7
February 1976	<u>5,017,069</u>	<u>1,021,178</u>	<u>20.4</u>
Totals -- May 1974 to February 1976	<u>\$196,086,947</u>	<u>\$35,251,661</u>	<u>18.0%</u>

In addition, during the eight months prior to the inception of the Small Business Office, the Office of Procurement calculated that a minimum of 15.4 percent of the Office's dollar volume was with businesses whose annual sales volume was less than \$750,000. In comparison, the percentages shown in Table 3 apply to businesses whose annual receipts are less than \$1 million and \$5 million for nonmanufacturers and manufacturers respectively.

The Small Business Office has compiled a list of more than 5,500 names and addresses of small business vendors. A survey of these vendors revealed that most are either not very familiar or totally unfamiliar with the State's small business program or the Small Business Office, and that neither the program nor the Office has significantly influenced the amount of business these vendors transact with the State of California.

Of the vendors surveyed, 77 percent responded that they either were "not very familiar" or were "totally unfamiliar" with the Small Business Office. Only six percent of the vendors surveyed responded that most or some of their increases in State of California sales were due to the efforts of the Small Business Office.

Half of the vendors surveyed were unaware that small businesses were entitled to a five percent price preference when bidding on state purchases, and 23 percent of the vendors surveyed did not know if they were a small business as defined by the Director of General Services.

A summary of the results of our survey is included in Appendix L.

Insufficient Identification of
Commodities Supplied by Small
Businesses

One factor contributing to the program's lack of impact on small business purchases by the State is that the Department has not established procedures to sufficiently identify the commodities supplied by small businesses. Without such commodity information, potential opportunities for small businesses are lost.

The Office of Procurement processes purchases of less than \$1,000 through a unit known as the "express line". The purpose of the express line is to process purchases as quickly as possible and with a minimum of paperwork. Unlike formal bids where all qualified vendors

are mailed invitations to bid, the express line buyers solicit bids from vendors by telephone. The number of vendors contacted for each express line purchase varies from one to several at the discretion of the buyer.

Each buyer on the express line is responsible for certain commodities. Requisitions are routed to the appropriate buyer on the express line, depending on the commodities to be purchased.

Each buyer on the express line has a "commodity book" which lists the vendors that supply each commodity. By referring to the commodity book the express line buyer knows which vendors supply which commodities. However, small business vendors are frequently not included in the commodity books because the Department has not identified all of the commodities supplied by all small business vendors. As a result, many small business vendors are not given the opportunity to bid on and receive express line purchases.

Activities Carried Out May Not Have
Been Authorized by the Small Business
Procurement and Contract Act

The Small Business Office engaged in activities during calendar year 1975 that are not authorized by the Small Business Procurement and Contract Act. In addition, the Director of General Services is using the Small Business Procurement and Contract Act to implement an affirmative action purchasing program for minority and women-owned businesses; such a program may not conform with the intent of the Act.

Unauthorized Activities

Approximately \$6,200 was spent by the Small Business Office for an activity that was not authorized by the Small Business Procurement and Contract Act. This activity consisted of having one member of the Office's staff spend most of his time over a four-month period helping a new business get organized, obtain financing and become operational.

In March 1975, the Department's Chief of Procurement and Chief of the Office Services Division submitted a proposal to the Director of General Services which recommended that the State of California refurbish and recycle its general purpose office furniture, instead of buying new equipment. Potentially, this procedure could save the State an estimated \$1 million per year.

A nonprofit California corporation serving the migrant and seasonal farm workers (Campesinos) in Santa Clara, San Benito, Santa Cruz and Monterey Counties requested that the Department establish a program to help reduce unemployment for the Campesinos during the off-season. A Deputy Director considered the concept worthwhile. He believed that the proposed furniture refurbishing project could be performed by the Campesinos if they were properly organized and could do the work at a competitive price. The Deputy Director instructed the Chief of the Small Business Office to dispatch one of his staff to the Gilroy, California area to assist in the organizational efforts. The Gilroy area was selected for this "outreach" program because of its high unemployment rate. As of

March 31, 1976, approximately \$2,160 of business has been transacted between the entity in Gilroy and the Department.

The Legislative Counsel, in an opinion dated February 14, 1976, stated that the Small Business Office "is not authorized to assist in organizing, financing, or establishing any business to do business with the State...The duties of that office are basically ones of coordination, assistance, compilation and recommendation".

Affirmative Action Program

The Director of General Services has established an affirmative action purchasing program for minority and women-owned businesses. The goal of this program is to award 50 percent of the purchases processed through the Office of Procurement's "express line" to large businesses, 25 percent to small businesses, and 25 percent to minority and women-owned businesses.

To implement this affirmative action purchasing program the following actions have been taken:

On August 19, 1975, a Deputy Director wrote the Chief of the Office of Procurement:

Currently, prevailing policy calls for "Express Line" callers to solicit quotes from as many minority vendors as practicable. It is intended this memo will outline some needed follow-up procedures. We are addressing two areas of concern.

Firstly, attached is a Master Listing of 29 minority business firms. The names of business firms which appear on this listing were transmitted to the "Express Line" by the SBO on the dates indicated. The listing was

provided for solicitations of quotes from minority and women-owned firms regarding commodities the State purchases. We wish to receive progress reports concerning any business these firms have received from the State resulting from SBO referral.

Secondly, this will also serve as a request for you to begin recordation of dates and times "Express Line" callers contact minority and women-owned firms. We shall require a written report at intervals of every 60 days, beginning October 31, 1975. The report should include (1) a listing of minority firms contacted, (2) dates and times contacted, (3) frequency of contact, and (4) volume and dollar awards, if any, resulting from these contacts.

On October 27, 1975, a Deputy Director wrote the Chief of the Office of Procurement:

The Legislature in enacting the Small Business and Procurement Act has expressed as its policy that a fair share of the State's purchases be placed with small business enterprises. Because minority and women-owned businesses constitute a significant percentage of small business firms,* we in the Department of General Services shall establish methods and procedures to see to it that minority and women-owned businesses receive at least 25 percent of the dollar volume processed through the Express Line of the Office of Procurement. Not only is this the declared policy of the State Legislature, but is in full conformance with Management Memo 75-44 [issued October 24, 1975] of the Department of General Services. [Emphasis added]

Please establish a time frame for the accomplishment of the above goals. Coordinate all efforts with the Office of Minority Business Enterprise and the Office of Small Business. It will be the responsibility of the Office of Minority Business Enterprise and the Office of Small Business to provide the Office of Procurement with the community resources to achieve the goals as indicated herein.

* As of January 9, 1976, minority and women-owned businesses constituted less than five percent of identified small business vendors.

The Department is currently proposing that all state departments report on a quarterly basis to the California Office of Minority Business Enterprise all purchases under \$5,000 made from small minority and women-owned firms.

In October 1975, six Office of Procurement buyers and the Chief of the Office of Procurement attended the "6th Annual Minority Business Opportunity Day" in Los Angeles. During the convention these buyers issued about \$22,000 in purchase orders.

In February 1976, 11 Office of Procurement buyers and its Chief attended the "Southern California Minority Business Opportunity Day" in San Diego. During this event \$35,134 in purchase orders was issued.

The Small Business Procurement and Contract Act does not refer to minority and women-owned businesses. The Legislature defined a small business only as one that is independently owned and operated and not dominant in its field of operation. Since minority and women-owned businesses are part of the small business community, a program designed to assist small businesses in general will also assist minority and women-owned businesses.

The Department has not recommended to the Legislature that the Act be changed to authorize activities such as those discussed above.

Costs of the Small Business Program

Since its inception in May 1974, the Small Business Program has cost the State of California nearly \$1 million in budgeted operating costs, small business price preferences, and additional costs incurred for the program by other offices and departments.

The Office of Small Business Procurements and Contracts has spent \$251,155 of General Fund money budgeted for its operations from May 1974 through February 1976.

As of February 29, 1976, small business price preferences have totaled \$267,653 on purchases by the Office of Procurement, and \$205,759 on contracts awarded by the Office of Architecture and Construction.

Officials of the Office of Procurement and the Office of Architecture and Construction estimate their offices will incur additional costs of \$191,000 and \$21,000, respectively, during the 1975-76 fiscal year to implement the Act.

A Department proposal to have all state departments report all purchases under \$5,000 made from small, minority and women-owned firms on a quarterly basis to the California Office of Minority Business Enterprises will add additional administrative costs to the program. These additional costs cannot be estimated at this time.

CONCLUSION

The Department of General Services has not established a small business program that fully accomplishes the intent of the Small Business Procurement and Contract Act. The program is beset with administrative problems, particularly with regard to determining what vendors or contractors are entitled to the small business price preference; up to \$166,710 in small business price preferences has been given to vendors or contractors that are not, or may not be, small businesses. The

program also has not had a significant impact on the pattern of state purchases or on the small business community as a whole. Further, the Department has not made timely and accurate reports to the Legislature regarding the progress of the small business program. As of February 29, 1976, the small business program has cost the State nearly \$1 million since its inception.

Unless significant improvements are made in the program, funding for its continued operation should be eliminated by the Legislature.

RECOMMENDATIONS

We recommend that the Senate Finance Committee and the Assembly Ways and Means Committee require the Director of General Services to develop and report to the Legislature by November 1, 1976 a plan of action to improve the small business program so that it will accomplish the intent of the Legislature. If the Director's report is not received by that date, all funding of the small business program should be terminated on January 1, 1977.

The Director's plan should, at a minimum, address the following issues:

- Procedures should be established to assure that only qualified small businesses receive the small business price preference. The determination of small-business eligibility would be more definitive if copies of Federal income tax returns were required annually from vendors and contractors claiming to be small businesses. Based on reviews of these tax returns, a list of verified small businesses should be established and regularly updated. At a minimum, the Small Business Office should verify claimed small-business status of all businesses that transact more than \$100,000 in business with the State in one year and those that are awarded a single purchase order or contract in excess of \$10,000 based on the small business price preference. A formal policy should be enacted to establish minimum penalties for businesses that falsely claim to be small businesses.

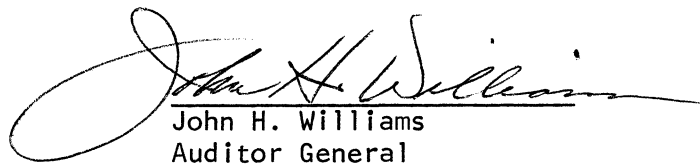
- The definition of "small business" should be refined to:
 - (a) eliminate those vendors from the small business program that are not independently owned and operated; specific attention should be given to affiliates and sales representatives of large companies

- (b) establish maximum number of employees and maximum dollar volumes that vary from industry to industry as necessary to reflect different characteristics of the industries.
- All small business vendors should be identified by all of the commodities they supply, and this information should be provided to the Office of Procurement.
- Legislative sanction should be obtained before any activities are undertaken that are not specifically authorized by the Small Business Procurement and Contract Act.

BENEFITS

Implementation of these recommendations will assure that the small business program established by the Department of General Services accomplishes the intent of the Legislature as expressed in the Small Business Procurement and Contract Act. If an acceptable plan of action is not received from the Director of General Services, additional expenditures of state funds will not be made for an ineffective program.

Respectfully submitted,


John H. Williams
Auditor General

April 12, 1976

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DEPARTMENT OF GENERAL SERVICES



April 7, 1976

John H. Williams, CPA
Auditor General
925 L St., Room 750
Sacramento, CA 95814

Dear Mr. Williams:

This is a letter of transmittal with respect to the current report of the Office of the Auditor General to the Joint Legislative Audit Committee. Attached is a line item accounting of the accomplishments of the Small Business Office and a summary of the Department of General Services' review of the Auditor General's report. The Committee should be apprised of the following facts.

The Small Business Office was established in February of 1974. The actual expenditures in the Small Business Office from February 1974 to June 1974 were \$27,000, accounting for .9 man years. The actual expenditures in the following fiscal period, July 1, 1974, to June 30, 1975, were \$116,000, accounting for 5.8 man years. During these periods, the Small Business Office was substantially understaffed.

Beginning March 1974 to March 1975, the Small Business Office received the services of three OEO interns paid for by the Federal Government through the local OEO program. From March 1, 1975, to March 1, 1976, the Department of General Services assumed the payroll responsibilities for these OEO interns. Currently, two of the OEO interns have been classified civil servants under the job title Small Business Assistants, a new classification established through State Personnel Board and the Small Business Office. Because of a mid-year Budget Change Proposal, the Small Business Office is now budgeted for 11 full time positions. The positions are Division Chief, Assistant Division Chief, two Staff Services Analysts, one stenographer, three clerk typists (one stationed in Los Angeles), and three Small Business Assistants.

In summary, full staffing of the Small Business Office did not occur until mid-fiscal-year 1975-76 (effective February 1, 1976).

Highlights of the small business program are as follows:

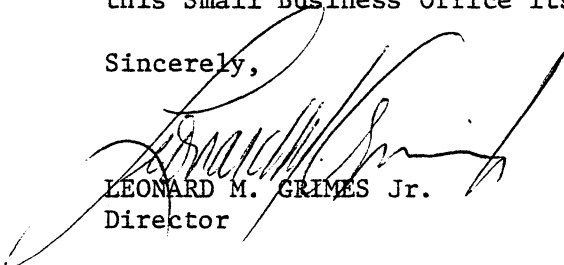
1. The comprehensive Small Business Office vendor file has been increased from 1400 (calendar year 1974) to 5700 (calendar year 1975), an increase of 300%.
2. Awards based on the preference rate have increased from \$3 million (calendar year 1974) to \$8 million (calendar year 1975), an increase of more than 160%.

3. The number of identified small business vendors that received awards with the State of California increased from 901 (calendar year 1974) to 1616 (calendar year 1975), an increase of 80%.
4. The small business dollar volume almost doubled in calendar year 1975. The 1616 vendors were awarded a total of \$31 million worth of purchase orders or contracts compared with \$17 million in 1974. Sixty-three small business vendors did \$100,000 or more worth of business with the State, for a total of \$18.9 million. The remaining 1551 vendors did \$12.1 million worth of business with the State of California, or 39% of all awards. It should be noted that the 63 vendors in procurement activities did \$8 million in total awards in 1975, of which \$4 million were preference rate awards. In 1974 the same group did only \$2.04 million, of which \$765,000 were in preference rate awards. This is roughly double participation in one year.
5. To assist small businesses, the Small Business Office initiated efforts to provide small businessmen and others a forecast of what the State buys by commodity, quantity, and previous price paid where possible. This document has been of tremendous help to small businessmen to afford them the lead time absolutely necessary for the development of working capital and cost estimates.
6. At the urging of the Small Business Office, the State Architect is considering designing jobs into segments that are possible for small business persons to perform.
7. The Small Business Office has provided outstanding assistance to small business contractors by establishing six reference libraries throughout the State where small business contractors can review State of California bid specifications, architectural plans, and engineering changes for building construction at no cost to the small business vendor. This reference library provides services similar to the Builders' Exchange. Builders' Exchange fees are found to be prohibitive to the small contractor.
8. Special consideration has been extended to small businesses. The elimination of experience and level of inventory requirements has had no adverse effect on the State's procurement program. The results have been of great significance to small businesses.
9. Instances have occurred where businesses have claimed the small business preference rate when, in fact, they were not entitled to that rate based on the Director's rules and regulations. The Legal Office of the Department of General Services has recommended to the Small Business Office in almost all cases that evidence does not exist to show that these businesses knowingly perjured themselves because of some ambiguities that exist in the current rules and regulations. The Small Business Office, working with the Legal Office, is developing amendments to the rules and regulations to clarify these so-called ambiguities. In all cases where small business persons have received unwarranted preference rates, the Department has asked for restitution or is in the process of requiring restitution.

These highlights clearly establish the Small Business Office as a valuable and integral part of the State's overall procurement and contracting program. The attached line item accounting of the Small Business Office's accomplishments testifies to the very significant impact this office has had on the pattern of State purchases from small businesses and on the small business community as a whole.

As with any program in a start-up mode of operation, deficiencies do exist and substantial improvements are scheduled for this calendar year. The Department encourages the State Legislature and the Administration to give this Small Business Office its fullest support and endorsement.

Sincerely,



LEONARD M. GRIMES Jr.
Director

LMG:JC:gay
445-3441

Attachment

Line Item Account of Small Business Accomplishments

Chapter 6.5 Small Business Procurement and Contract Act

1. Paragraph 14839(a)

Compile and maintain a comprehensive bidders list of qualified small business.

ACTION:

In calendar year 1975 the small business vendor file was increased from 1,400 to 5,700, a difference of 4,300 vendors. This represents an increase of 300% in identified small businesses.

Currently, the Small Business Office is processing in excess of 300 prequalification forms per month. Many small businesses submit incomplete prequalification forms, are service oriented rather than commodity suppliers and/or are seeking new market areas. The result of the review of prequalifications forms is that 1 out of 5 small businesses supplying prequalification forms to the State provide a commodity that the State may or currently does purchase.

At current rate of vendor file expansion, it will contain 6,500 small business firms by end of calendar year 1976. The Office of Procurement claims, and we feel justly so, that the prequalification process is costing them approximately \$191,000 per year in excess of previous years. These costs are for the necessary enlarged mailing lists, increased buyer review time of vendor list, increased clerical time with respect to telephones/correspondence, and other such transactions. This is further evidence of the success of the Small Business Office recruitment process. The Small Business Office is working with the Office of Procurement to further simplify the methods of paper flow and form designs. The Small Business Office devotes a considerable amount of time providing bid recaps, i.e., telling small businesses where they stood with respect to other vendors at the time of the bid opening. This recap service is supplied on a

weekly basis. The growth rate of the Small Business List is the end product of many individual efforts (presentations lectures, efforts of business development organizations, OMBE, Chamber of Commerce, the NFIB, and other organizations).

2. Paragraph 14839(b)
Coordinate activities with the Federal Small Business Administration, the Office of Minority Business Enterprise, and the Executive Board of the California Job Development Corporation.

ACTION:

Coordination with the Federal Small Business Administration has always been an ongoing effort. The problems that plague small businesses are typically categorical. Small businesses are constantly in need of working capital, bonding assistance, referral services with respect to the small business administration, Federal, city, and county procurement, and other agents as required. Coordination with the OMBE is a daily activity. For clarification the Small Business Office devotes its time to the entire spectrum of California small businesses. The Office of Minority Business Enterprise concentrates its efforts on businesses in the minority community.

The Small Business Office works closely with the California Job Creation Program Board and its regional corporations referring vendors to them that require working capital and/or technical, managerial and financial assistance.

3. Paragraph 14839(c)
Assist small businesses to comply with bidding procedures on State contracts.

ACTION:

This function is performed by Small Business Office for all vendors who request it. The Small Business Office is constantly relied on to provide information on progress payments. The issue of progress payments is one that require transactions with the Office of Procurement, legal staff at the Department of General Services, and the accounting division. Many small businesses require assistance in the preparation of invoices and the clarification of discount rates. Many small businesses are unaware, for instance, that the declaration of a discount rate in many cases is an incentive for the prompt payment of the invoice. This function is vigorously carried out with other State agencies.

4. Paragraph 14839(d)

Work with appropriate State, Federal, and private organizations to disseminate information on bidding procedures and small business opportunities for State contracts.

ACTION:

Early in calendar year 1975 the Department of General Services requested that all agencies, boards, and commissions identify a person to act as a liaison with our Small Business Office. The Small Business Office encourages these agencies, boards, and commissions to comply with the spirit and intent of the Small Business Act of 1973. The Director of the Department of General Services issued Management Memo 75-44 to reveal the responsibilities of other agencies in complying with the intent of that Act (a copy of management memo is attached). The Small Business Office is expecting the first quarterly report on April 15. In adhering to Management Memo 75-44, response has been very encouraging in reporting both numbers and dollar amounts of activity that other agencies are doing with small business. Among the many governmental units reporting are Department of Real Estate, Department of Consumer Affairs, Department of Food and Agriculture, Patton State Hospital, Camarillo State Hospital, and California State University at Northridge. In the very first three months, the dollar totals of those few agencies reporting, amount to \$104,000. These purchases are service contracts and/or delegations controlled by these agencies. This information will be systematically compiled and ultimately reported annually to the State Legislature under the mandates of the Small Business Act.

The Small Business Office continues to publish a "Forecast Data of Repetitively Purchased Commodities" on a quarterly basis, and have made quarterly updates during 1975-76. It is issued at considerable time and effort so that the small business community can make the best use of lead time, marshal resources and complete their cost estimates. This publication has been a "best seller" to date for the Small Business Office. To effectively distribute information on

construction activities, there has been established contractor referral libraries in six locations (Sacramento, San Jose, Fresno, Los Angeles, San Bernardino, and San Diego) wherein small contractors can walk in and review the latest plans, specifications, engineering changes for each OSA job in that metropolitan area without cost to them.

The results of this program have been outstanding. Clearly, at least \$500,000 worth of construction contracts with small business contractors can be directly attributed to this reference library concept.

Administratively, we eliminated the need for CPA attested financial statements for contractors on jobs less than \$500,000. However, formal attestation is still required on projects estimated at \$500,000 and up. The results of this approach have been outstanding. The removal of this attestation requirement represents a considerable savings to the small business contractors. Previously a small business contractor was required to go through an expensive attestation process just to take a chance on a bid. The Small Business Office is to be credited with this major breakthrough. Note that all contractors on State jobs exceeding \$10,000 must secure bonding. The surety corporations require CPA attested financial documents. The contractor will be required to go through the attestation process if and only if he or she wins the award.

5. Paragraph 14839(e)
Assist State agencies to determine which bid invitations are to be designated for small business preference.

ACTION:

The Small Business Office requests that the extension of the 5% preference rate to other agencies, boards, and commissions be considered for fiscal year 1977-78. The Auditor General's report is clear in suggesting that the shakedown for the Small Business Office, its rules and regulations, are not yet complete. Proposed changes in rules and regulations to further improve this program and an analysis thereof will require an in-depth review prior to expanding the program.

6. Paragraph 14839(f)

Make recommendations to the Department and other State agencies to increase the opportunities for small business participation by simplifying specifications and terms.

ACTION:

Recommendations have and are being made to increase the opportunities for small business participation by simplifying specifications and terms. Specifically, suggestions have been offered relative to decreasing the dollar size of bid invitations to facilitate bidding and handling by small businesses. This suggestion the Small Business Office believes, would not only increase the participation of small businesses, but would reduce inventory costs to the State of California. Recommendations have been made to the Office of State Architect that wherever feasible the Architect should design the construction project in a modular package providing independent prints for construction, paving, fencing, landscaping, etc., in place of integrated drawings. This will allow the State of California to break down jobs improving the participation of small business contractors. An example of this approach are the current architectural plans for the Maritime Academy at Vallejo, California. This job was divided into 7 contracts ranging from a high of \$2.4 million to a low of \$98,000.

The Small Business Office has contributed substantially to cost reduction. For the first time in the history of the Office of Procurement, a forecast data of repetitively purchased commodities is complete. A windfall from the development of this forecast has been standardization of product specification and issuing of contracts for repetitively purchased commodities in lieu of issuing multiple purchase orders. Cost savings are estimated at \$1.5 million per year. \$500,000 is estimated in Central Stores materials savings and \$1,000,000 in procurement activity for other agencies.

7. Paragraph 14836

Establish a detailed definition of small businesses on an industry-to-industry basis setting the criteria for maximum number of employees and maximum dollar volume.

ACTION:

A shotgun approach to industry by industry, Small Business definitions would not be cost effective. The Small Business Office has established a comprehensive bidders list to determine which industries small business persons are interested in and will establish industry-to-industry definitions based on this profile. The Small Business Office has devoted the principal amount of its energies to clarifying the definition of manufacturer and nonmanufacturer and recruiting small business vendors. The Small Business Office feels that for the first time a comprehensive bidders list is available as submitted in the annual report.

8. Paragraph 14838(a)

Establish goals for the extent of participation of small businesses in State procurement and construction contracts.

ACTION:

The Director of the Department of General Services has established goals for the extent of participation of small business in State procurement and construction contracts. It is the goal in the Office of Procurement that 50% of all purchase orders issued for less than \$1,000 be made with small businesses. This goal has been achieved. For FY 76-77 this goal has been revised upward to 50% of all purchase orders less than \$5,000. This will amount to approximately \$10 million per year. No formal goals have been established in the Office of the State Architect. Realistic goals for the Office of Procurement's contracts and the Office of the State Architect (formerly the Office of Architecture and Construction) will be established upon review of the past year's record. The actual amount contracted with small business in the 1974-75 calendar year was \$31 million. Of the 31 million, approximately \$5 million was contracted with small businesses through the Office of the State Architect. This represents approximately 14% of the total awards issued by that office (OSA). Based on this track record and a growing list of small business construction contractors, we believe that a 25% goal of all construction contract dollars is realistic and achievable. In the Office of Procurement (procurement contracts) 16.2% of the dollar awards went to small business and again the growing small business vendor list and the past year's performance reveals that perhaps a 25% goal in this area is realistic and achievable. The Small Business Office will review this track record with the Director and recommend the Director issue goals for the Office of Procurement, purchase orders and contracts, and the Office of State Architect by May 1, 1976.

The critical variable in the success of the Small Business Office is the size of the small business vendor file and the distribution of the vendors among various commodity codes. To maximize the use of this growing vendor file, the file is being organized for electronic data processing on a commodity code basis. This will allow more rapid access to buyers and State Contract Management. The file of small businesses by commodity code will be ready by August 15, 1976. The funding to provide the electronic data processing (\$23,000) was appropriated for fiscal year 1976-77. Money will be available July 1, 1976.

The Small Business Office has developed with the Office of Procurement a forecast on a quarterly basis of what the State will buy. This information is being distributed (distribution began September 1975) to small business vendors and other interested parties on a timely basis.

9. Paragraph 14838(b)

Provide a 5% price preference rate to small businesses bidding on State purchases and contracts, when responsibility and quality are equal.

ACTION:

In calendar year 1975, the Department of General Services awarded a total of \$8 million (\$7.96 million rounded off to \$8 million) of procurement and construction contracts (\$5.5 million to procurement vendors and \$2.5 million to construction contractors) to small businesses utilizing the 5% preference rate. This compared with \$3 million awarded to small businesses in 1974 using the 5% preference rate. Clearly, there has been a significant increase in the number of awards issued to small business persons during this comparison of calendar years. The Auditor General points out that 65 procurement vendors received 72% of the procurement preference rate awards during 1975. This amounts to \$4.04 million. These 65 vendors also did \$4.26 million in business other than preference awards for a total of \$8 million in 1975. Interestingly, these 65 firms did only \$765,000 in preference rate awards and only \$2.04 million in total in 1974. Further, a cursory look at these vendors indicate they are in commodity areas of heavy purchasing, in high price, and high volume, (asphalt, paint, towels, guard rails, and dump bodies). The conclusion is that the preference rate is certainly helping these small business persons. In summary, 65 firms received 83% of the dollar awards using the preference rate leaving 17% of the dollar awards distributed over other small businesses using the preference rates.

The total number of small businesses that received awards through Office of Procurement and Office of the State Architect were 1,616. Of the 1,616 vendors 1,551 doing less than \$100,000 per year with the State received \$12.1 million of the \$31 million that went to small business.

10. Paragraph 14838(c)

Give special consideration to small businesses by reducing the "experience" and "level of consideration to inventory" required for qualification.

ACTION:

This consideration has been accomplished. Special consideration to small businesses in the reduction of "experience" and "level of inventory" requirements has been administered through Office of Procurement. Formerly the Office of Procurement required two years' experience and a verified level of inventory for prequalification purposes. For all intents and purposes, these requirements have been dropped for in-State bidders. The Office of Procurement continues to require experience and proof of inventories on out-of-State vendors.

The number of defaults among small businesses since the reduction of this criteria has been negligible. This reduction of prequalification criteria has been of significant assistance to small businesses and the State of California. The Small Business Office is currently cooperating with the Cal Job Board, the Federal Government, the cities and counties to standardize our prequalification process. The Cal Job Board has funded a small business consultant firm to establish a pilot program which will further eliminate red tape insuring that once a small business person is prequalified with the State he will in turn be prequalified with the Federal Government, cities and counties.

11. Paragraph 14838(d)

Give special assistance to small businesses in the preparation of questionnaire and financial statements required with bids.

ACTION:

Fifty-five percent of the personnel time in the Small Business Office is spent interacting with small businesses in the clarification of commodity specifications, the timely submittal of prequalification forms, and the verification process with respect to the application forms for the 5% preference rate and the verification of bona fide small business status with respect to the 5% preference rate. Furthermore the small business personnel worked diligently to distribute the forecast of the Office of Procurement's activities.

A Reply To The Auditor General's

Findings and Recommendations

I. The Auditor General states in his report that 57% of the business conducted with Office of the State Architect through the 5% preference rate was awarded to contractors who "may not be small businesses".^{1/} The Small Business Office has detailed records of these businesses. This 57% of the preference rate awards went to five contractors. The names of the contractors and the preference rate amounts are listed:

Diversified	\$ 41,986
Bonadiman-McCain	47,500
W. R. Buchanan	20,500
Omega Construction	3,896
Lloyd Moen	<u>2,639</u>
	\$116,521

II. Diversified submitted income tax forms to substantiate their claim. They are a bona fide small business. As we understand it, the bonding corporation required Diversified to acquire a number of cosigners. Evidently, the Auditor General believes that cosigning and indemnifying a bond by a second party is evidence of affiliation. Our legal staff has ruled that unless there is consideration for the indemnification or cosigning, there is no affiliation. Proof of consideration is required for the existence of an affiliation. Bonadiman-McCain was awarded the contract based on a bond that was cosigned and indemnified by a larger contractor. Again, our legal staff was satisfied that there indeed had been no consideration even though the larger contractor indemnifying the bond was awarded a subcontract. Buchanan submitted the preference rate application, signing the application under penalty of perjury. The Small Business Office is currently

^{1/}Page 7, paragraph 1, of the Auditor General's report.

requesting Buchanan to submit IRS statements to further verify small business status. Omega submitted partnership tax forms to verify small business status and is a bona fide small business. Moen, who is a small business, was eligible until June of 1975, when because of business activities Moen overran the upper limit of gross receipts for small business status and was ruled ineligible by the Small Business Office. In summary, all firms signed the preference rate request forms under penalty of perjury and declared that no affiliations existed where gross receipts exceeded the upper limits. Three out of the five firms submitted substantial proof of their eligibility for the small business preference rate and accounted for 80% or \$93,382 of the dollar amount in question. Moen, the firm who was ruled ineligible as of June of 1975, received 2% of the dollar amount in question leaving Buchanan with the remaining 18%. The Small Business Office is currently requesting additional proof of Buchanan's small business status.

- III. The Auditor General, on Page 7 of his report, implies that 65 vendors are running off with the lion's share of the small business preference rate. These small businesses in receiving the awards were in competition with big businesses. Had it not been for the 5% preference rate they would not have received the award. As these businesses grow and exceed the upper limits of gross receipts, they will be purged from the small business field. To insure that the purging process occurs every preference rate award on a purchase order or contract exceeding \$10,000 will be challenged by the Small Business Office. Challenged firms will be allowed to submit their IRS statements to substantiate their small business status.

Referring to Page 11 of the Auditor General's report regarding "inadequate definition of small businesses", the Auditor raises some valid points. The subject of

manufacturers and nonmanufacturers, affiliations, and manufacturers' representatives, is a subject that the Small Business Office has been struggling with for some time. To prevent the abuse of this program by ineligible persons, the Small Business Office is recommending to the Director that more specific and detailed criteria be entered in the rules and regulations. These proposed recommendations to the Director will effectively change Title 2 of the Administrative Code, Section 1896. The Director of General Services will be asked to implement these under the emergency rule. With subsequent hearings and inclusion in the final report to this committee on this subject.

- IV. As mentioned earlier, the Small Business Office after reviewing the comprehensive small business vendor list will hold public hearings to determine industry-to-industry standards of eligibility for the small business preference rate. The Auditor General, like the Small Business Office, expresses significant concern over the small business preference rate and the meat and dairy industry. The definition of a manufacturer is clearly a function of value added. The Small Business Office has been working with Procurement for some time to negotiate an equitable definition of a bona fide small business vendor in the dairy business. This definition will be reviewed by our legal staff and will be submitted to the Director for rapid integration into the rules and regulations.
- V. The Auditor General developed a questionnaire to determine the effectiveness of the Small Business Office. The questionnaire was sent to a random sample of vendors. The Auditor General's staff assured the Director that the questionnaire and the sampling process had been scientifically developed and that the results held a 95% confidence level. Reviewing this sample reveals some startling statistics with respect to the effectiveness of the Small Business Office:

1. Sixty percent of respondents stated they had familiarity with the Small Business Office. This represents approximately 3,300 small businesses.
2. Twenty-four percent of respondents had contact with the Small Business Office. This represents 1,320 small businesses.
3. Twenty-nine percent stated that contact was moderately or very helpful. This is 1,595 firms. Only six percent stated that the Small Business Office was of no help. The reason for no help from the Small Business Office could be the situation of the firm; it does not have to be ineffectiveness of the Small Business Office.
4. Seventy-one percent of respondents did \$1,000 or more in business with the State.
5. Eighty percent of respondents had done business with the State in 1975.
6. Eleven percent of respondents attributed increase in business with the State through efforts of the Small Business Office.
7. Of the 58 percent of respondents, 37 percent stated they became aware of the SBO through representatives or literature from the office. This includes 14% who heard of the office through publications.
8. Seventy-seven percent of respondents knew they were small businesses as outlined in the Department's rules and regulations.
9. Of the 59 percent of respondents, 50 percent were aware of the price preference.
10. Forty-eight percent of respondents indicated they were aware of different services offered by the Small Business Office.

11. Eighty-four percent of respondents had 25 or less employees. Twelve percent of respondents had between 26 and 50 employees. Ninety-six percent qualified as small business based on number of employees for manufacturer and nonmanufacturer.

12. Eighty-three percent of respondents had less than \$1 million annual receipts. Fifteen percent of respondents had between \$1 and \$5 million annual receipts. Nine-eight percent of respondents qualified as small business based on their annual receipts for manufacturer and nonmanufacturer.

VI. It is true that the Small Business Annual Report overstated the amount of business that small businessmen did with the State of California by \$7 million. A careful review of the Annual Report reveals on Pages 4, 5, and 6 that the total amount of business conducted with small business vendors and contractors did indeed exceed \$31 million. Overstatement was simply a clerical error.

VII. The Auditor General's report continually makes use of the word "may". The use of this word "may" is highly subjective and we believe the Auditor takes unwarranted liberties in its use.

VIII. The Small Business Office has continued to evolve over the last two years and the rules and regulations are being further developed to provide low cost control and non-onerous requirements. The upper limits for the definition of small business manufacturers and nonmanufacturers are being reviewed today. These upper limits when contrasted with the Federal small business rules and regulations are far more "little business" oriented. Where the Small Business Office established a small business at the \$1 million (retailer) or \$5 million (manufacturer) upper limit, the Federal Government has upper limits exceeding hundreds of millions of dollars.

IX. The Auditor General includes a section in his report on "activities carried out may not have been authorized by the Small Business Procurements and Contracts Act". The implication in this section is that the Director of General Services is using the Small Business Procurements and Contracts Act to implement an affirmative action program for minority and women businesses. This is not entirely true. The Director of General Services is using all his resources to see to it that minorities and women indeed are not systematically excluded from the procurement and contract activities of the State of California. The role of the Small Business Office is one that is clearly specified in Government Code Section 14836 where the Legislature declares that it is to the benefit of the State to promote and facilitate the fullest possible participation by all citizens in the affairs of the State of California, that it is desirable to improve the economy of the State in every possible way. Further, it is a declared policy of the Legislature that a fair proportion of the total projects and contracts or subcontracts for property and services for the State be placed with small business enterprises. To realize this goal, the Small Business Procurements and Contracts Act declared specific instructions to the Director of General Services on how to facilitate the fuller participation of small businesses. This Act has significantly increased the participation of small businesses from what is believed to be less than 10% participation to 18% participation in 1975. This amounts to approximately \$31 million. The Legislature, realizing that small business persons in order to compete effectively required preferential treatment in general, must in all its wisdom accept the fact that minority and women small businesses suffer a double jeopardy. To assess this double jeopardy, the Director of General Services is determining just how much business minorities and women are doing with the State.

In 1974, the percentage of General Services State business that went to minorities and women approximated near zero and rose to approximately 1/2% in Fiscal Year 74/75. The vendor file of small businesses includes 300 pre-qualified minority businessmen and contractors or about 6% of the 5,700 small business persons overall. Clearly, minority and women business persons are under-represented in the awards profile of the State's procurement program, representing 6% of the business persons and receiving approximately 1/2% of the awards (\$1.2 million). To correct this under-representation, a Deputy Director of General Services has issued a memo to the Chief of the Office of Procurement establishing a goal of 25% of the dollar volume processed through the Procurement Office for purchase orders less than \$1,000. It is estimated that if this goal is fully achieved, it will represent approximately \$2.5 million, or 1.25% of all the State's procurement activities. Clearly, a full realization of this goal is not going to correct the under-representation of minority and women participation, but is a step in the right direction. Results to date show that the goal has been considerably under-run. Minorities and women actually received less than \$125,000 in total procurements as a result of this goal establishment representing less than 1/20 of the goal of \$2.5 million.

The Department recognizes that many small businesses, minorities and women included, are labor intensive oriented. Studies by this Department show that the State of California could conceivably save up to \$1 million per year by labor intensive-renovating furniture in place of purchasing new furniture. Recognizing that this effort has high job development potential, the Department is seeking to have this work done in communities where unemployment is substantial and persistent, bearing in mind that at no time will the State have this work done at prices exceeding the current market rate. One such area of persistent and substantial unemployment is the Southern Santa Clara Valley.

Other areas would be the Mission district in San Francisco, Watts in Los Angeles, etc. A pilot project was established in Gilroy to have a small business expand its potential to provide the State with renovated furniture. A small business office was established in that community to assist in the development of that potential, provide ready access to the Job Creation Program, the Small Business Administration, OMBE, housing and community development, and the Employment Development Department. An individual was assigned the task of interacting between this small business and related State agencies. In addition, the Small Business Office recognized that small businesses in Santa Clara Valley have not been recruited to do business with the State. The individual was assigned, in addition to assisting the small businesses, the task of recruiting small business vendors from the Santa Clara Valley. All business interactions between this furniture renovating small business and the State agencies was conducted in conformance with the State Procurements and Contracts Act. Total expenditures for this pilot project were \$6,200. The Department of General Services believes that additional outreach programs such as these would be beneficial to the communities of the poor and overall job development. The Department recognizes that this has been an effort to comply with the uncodified segments of the Small Business Procurements and Contracts Act, the declaration of the Legislature's intent. The Department of General Services would appreciate further clarifications of this declared intent before proceeding further with these types of pilot programs.

- X. An exhaustive and comprehensive study of the Auditor General's report will be submitted prior to November 1, 1976. The Auditor General recommends that the program not be funded unless specific improvements are made. This has always been the operating premise of the Small Business Office.

MANAGEMENT MEMO

	NO. 75-44
SUBJECT: Affirmative Action Procurement Activity	DATE ISSUED: October 24, 1975
REFERENCES:	EXPIRES: June 30, 1976

The Legislature in enacting the Small Business and Procurement Act (Government Code Section 14835, et. seq.) has expressed as its policy that a fair share of the State's purchases and contracts or sub-contracts for property and services be placed with small business enterprises. Minority and women owned business firms constitute a significant percentage of small business firms, and to that extent, such firms are encompassed within the Legislature's declared policy.

In accordance with the spirit of the Legislature's declared policy as set forth in the Small Business Act, all State agencies are encouraged to vigorously seek and promote increased participation of those minority and women owned firms which are small business firms, and small business firms in general, in the State's business transactions.


The objective of increasing participation by small business firms in the State's business transactions can be accomplished by identifying the availability of those small business firms which are qualified and competent in a particular project field, and by communicating notice to such firms of opportunities to submit bids or proposals in response to the State's invitations for same.

While there currently exist some statutory directives which prescribe a particular mode of transmitting notice to prospective bidders and vendors interested in doing business with the State, these are limited to specified categories. Some examples of such categories are State construction contracts (Public Works) with estimated costs of \$10,000 or more, and those procurements for equipment, supplies, and materials for which authority is vested in the Department of General Services (Government Code Section 14790, et. seq.).

Aside from those State business transactions which are prescribed by statute, a substantial portion of the State's business is implemented administratively. It is in this area which State agencies are encouraged to achieve increased participation by small business firms. This would include but not be limited to, construction contracts with estimated costs under \$10,000, contracts for personal services and consultant services, and procurements of supplies and equipment for which responsibility may have been delegated by the Office of Procurement

In order to facilitate the evaluation of this policy guideline, agencies are urged to report to the Small Business Office on a quarterly basis, the number and monetary amounts, of contracts or purchases, transacted with small business firms. Transactions with known small minority or women owned firms should be tabulated separately.

The California Office of Minority Business Enterprise (Cal-OMBE/322-3420), and the Office of Small Business (DGS-SBO/322-5060), will be available for assistance in implementing the objective of this memorandum.



Leonard M. Grimes Jr.
Director of General Services

DISTRIBUTION: This Management Memo must be distributed to persons assigned State Administrative Manuals designated as:
A B C D E F G H I J K L M N O P R S X MM

SMALL BUSINESS PROCUREMENT
AND CONTRACT ACT

California Government Code, Section 14835ff.
(Stats. 1973, Ch. 1198)

14835. This chapter shall be known and may be cited as the Small Business Procurement and Contract Act.

14836. (a) The Legislature hereby declares that it serves a public purpose, and is of benefit to the state, to promote and facilitate the fullest possible participation by all citizens in the affairs of the State of California and it is desirable to improve the economy of the State of California in every possible way. It is also essential that opportunity is provided for full participation in our free enterprise system by small business enterprises.

(b) Further, it is the declared policy of the Legislature that the state should aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise and to ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the state be placed with small business enterprises.

14837. As used in this chapter:

(a) "Department" means the Department of General Services.

(b) "Director" means the Director of General Services.

(c) "Small business" means a business which is independently owned and operated, and which is not dominant in its field of operation.

In addition to the foregoing criteria the director, in making a detailed definition, shall use these criteria, among others:

(1) Numbers of employees.

(2) Dollar volume of business.

The maximum number of employees and the maximum dollar volume which a small business may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and the director may take account of other relevant factors as determined by regulation.

14838. In order to facilitate the participation of small business in state procurement and in construction contracts under the Office of Architecture and Construction, the director shall:

(a) Establish goals for the extent of participation of small businesses in state procurement and in Office of Architecture and Construction contracts.

(b) Provide for small business preference where responsibility and quality are equal. Such preference to small business shall be 5 percent for the lowest responsible bidder meeting specifications.

(c) Give special consideration to small businesses under Section 1890 of subchapter 7 of Chapter 3 of Division 2 of Title 2, California Administrative Code (prequalification of vendors) by both:

(1) Reducing the experience required.

(2) Reducing the level of inventory normally required.

(d) Give special assistance to small businesses in their preparation and submission of the information requested in Government Code Section 14310.

(e) Under the authorization granted in Section 14311 of the Government Code, make awards, whenever feasible, to small business bidders for each project bid upon within their prequalification rating. This may be accomplished by dividing major projects into subprojects so as to allow a small business contractor to qualify to bid on such subprojects.

14839. There is hereby established within the department the Office of Small Business Procurements and Contracts. The duties of such office shall include:

(a) Compiling and maintaining a comprehensive bidders list of qualified small businesses.

(b) Coordinating with the Federal Small Business Administration, the Office of Minority Business Enterprises, and the Executive Board of the California Job Development Corporation.

(c) Assisting small business in complying with the procedures for bidding on state contracts.

(d) Working with appropriate state, federal, and private organizations in disseminating information on bidding procedures and the opportunities of small businesses for state contracts.

(e) Assisting state agencies in determining which invitations to bid are to be designated as small business preferences.

(f) Making recommendations to the department and other state agencies for simplification of specifications and terms in order to increase the opportunities for small business participation.

14840. The department shall submit an annual report to the Legislature no later than January 1 of each year commencing in 1975 containing the following information:

(a) An up-to-date list of eligible small business bidders by general procurement and construction contract categories, noting company names and addresses.

(b) By general procurement and construction contract categories, statistics comparing the number of eligible small business bidders to the total number of qualified bidders.

(c) A list of small businesses which were awarded contracts under this chapter and the dollar amount of each contract.

(d) Any recommendations for changes in statutes or state policies to improve opportunities for small business.

14841. The department shall submit to the Legislature a comprehensive evaluation of this act no later than January 1, 1976, in which recommendations are made for the modification and expansion of this act to other state agencies.

14842. The department may make all rules and regulations consistent with the law for the purpose of carrying into effect the provisions of this article. Rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of Chapter 4.5 (commencing with Section 11371) of Part 1 of this division.

SUBCHAPTER 8 OF TITLE 2 OF THE
CALIFORNIA ADMINISTRATION CODE*

- - -
"OFFICE OF SMALL BUSINESS
PROCUREMENT AND CONTRACTS"

Article 1. General Provisions

1896. Definitions. Definitions as Used in This Subchapter. (a) "Affiliates" means concerns are affiliates of each other when either directly or indirectly (1) one concern controls or has the power to control the other or (2) a third party or parties controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration shall be given to all appropriate factors, including common ownership, common management, and contractual relationships: Provided, however, that restraints imposed on a franchise by its franchise agreement shall not be considered in determining whether the franchisor controls or has the power to control and, therefore, is affiliated with the franchisee, if the franchisee has the right to profit from his effort, commensurate with ownership, and bears the risk of loss or failure.

(b) "Annual receipts" means the gross income (less returns and allowances, sales of fixed assets, and interaffiliate transactions) of a concern (and its domestic and foreign affiliates) from sales of products and services, interest, rents, fees, commissions, and/or from whatever other source derived, as entered on its regular books of account for its most recently completed fiscal year (whether on a cash, accrual, completed contracts, percentage of completion, or other acceptable accounting basis) and, in the case of a concern subject to U.S. Federal income taxation, reported or to be reported to the U.S. Treasury Department, Internal Revenue Service, for Federal income tax purposes. If a concern has been in business less than a year, its annual receipts shall be computed by determining its average weekly receipts for the period in which it has been in business and multiplying such figure by 52. If a concern has acquired an affiliate during the applicable accounting period it is necessary in computing the applicant's annual receipts, to include the affiliates receipts during the entire applicable accounting period, rather than only its receipts during the period in which it has been an affiliate. The receipts of a former affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(c) "Department" means the Department of General Services.

(d) "Director" means the Director of General Services.

(e) "Office of Procurement" means the Office of Procurement of the Department of General Services.

(f) "Office of Architecture and Construction" means the Office of Architecture and Construction of the Department of General Services.

* Amendments effective January 3, 1976 to reflect Stats. 1975, Ch. 308 (see Appendix M) are not included.

(g) "Nonmanufacturer", for the purpose of procurements made by the Office of Procurement, means any concern which in connection with a specific procurement contract, other than a construction or service contract, does not manufacture or produce the products required to be furnished by such procurement. Nonmanufacturer includes a concern which can manufacture or produce the products referred to in the specific procurement but does not do so in connection with that procurement.

(h) "Not dominant in its field of operation" means when it does not exercise a controlling or major influence on a state basis in a kind of business activity in which a number of business concerns are primarily engaged. In determining whether dominance exists, consideration shall be given to all appropriate factors, including volume of business, number of employees, financial resources, competitive status or position, ownership or control of materials, processes, patents, license agreements, facilities, sales territory, and nature of business activity.

(i) "Number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary, or other basis during the pay period ending nearest the last day of the third month in each calendar quarter for the preceding four quarters. If a concern has not been in existence for four full calendar quarters, "number of employees" means the average employment of such concern and its affiliates during the period such concern has been in existence based on the number of persons employed during the pay period ending nearest the last day of each month. If a concern has acquired an affiliate during the applicable accounting period, it is necessary in computing the applicant's number of employees, to include the affiliates number of employees during the entire applicable accounting period rather than only its employees during the period in which it has been an affiliate. The employees of a former affiliate are not included even if such concern had been an affiliate during a portion of the applicable accounting period.

(j) "Procurements" means purchases made in accordance with California Government Code Section 14780 et. seq., as the result of invitation to bid issued by the Department of General Services, Office of Procurement, pursuant to California Government Code Section 14807, for the purchase of material, equipment, and supplies for State agencies.

(k) "Small Business" as used with regard to a construction contract made under the Office of Architecture and Construction means a contracting business which has been pre-qualified as a Small Business.

A firm shall be eligible for pre-qualification as a small business if it meets the following requirements:

- (1) Has requested the status of a small business.
- (2) Is not (or together with any affiliate) dominant in its field of operations.

- (3) Is independently owned and operated.
- (4) Does not have, together with any affiliates, gross receipts from business operations exceeding the following amount:
 - (A) Where the small business, or any of its affiliates is a general engineering or general construction contractor -- \$2,000,000 in the aggregate for the preceding three years, or
 - (B) Where the small business is a specialty contractor -- \$1,000,000 in the aggregate for the preceding three years.
- (5) If the contract be over \$50,000 the firm must be pre-qualified under the State Contract Act (Section 14250 et. seq., Government Code).

These matters shall be set forth under the penalty of perjury on a form supplied upon request by the Office of Architecture and Construction and the completed form must be submitted by the firm not less than 5 days before the last day for submission of the bid as to which the firm seeks a Small Business preference.

(1) "Small Business", for the purpose of procurements made by the Office of Procurement, means:

- (1) A business which is independently owned and operated, and which is not dominated in its field of operation. In addition:
 - (A) A concern shall not qualify as a Small Business if it is an affiliate of another concern that would not be considered a Small Business or their affiliation would not be considered a Small Business.
 - (B) A nonmanufacturer shall not qualify as a Small Business if its number of employees exceed 25 or its annual receipts are more than \$1 million dollars.
 - (C) A manufacturer shall not qualify as a Small Business if its number of employees exceed 50 or its annual receipts are more than \$5 million dollars.

NOTE: Authority cited: Section 14842, Government Code. Reference: Sections 14835 et. seq., Government Code.

History: 1. New Subchapter 8 (Sections 1896, 1896.2, 1896.20 and 1896.30) filed 4-19-74 as an emergency; designated effective 5-1-74. Certificate of Compliance included (Register 74, No. 16).

Article 2. Small Business Preference

1896.2. Preferences. Preferences granted by the Office of Procurement for procurements and granted by the Office of Architecture and Construction for construction contracts. (a) Any bidder that meets the requirements of a Small Business (as defined in Section 1896, in the case of construction contracts subsection (k), or in the case of procurements made by the Office of Procurement subsection (1), of these regulations) and requests the Small Business Preference, shall be granted a preference in an amount equal to 5% of the lowest responsible bid, if that low bid has been submitted by a bidder who is not certified as a Small Business. If after deduction of the 5% preference from a Small Business Bidder's bid, it is equal to or less than the lowest bid, the bid shall be awarded to the Small Business.

(b) To be eligible for the above preference, there must appear on the bid form itself a statement, made under penalty of perjury, certifying that the bidder is a Small Business and, (1) on bids submitted to the Office of Architecture and Construction, that the firm still meets the requirements of Section 1896(k), (2) on bids submitted to the Office of Procurement that the firms meet the requirements of Section 1896 subsection (1).

(c) All other requirements of law, to include but not limited to, the State Contract Act, and subcontractor listing law of the California Government Code, and applicable sections of the California Labor Code, shall apply.

1896.20. Assistance. Assistance to Small Businesses by the Office of Small Business Procurements and Contracts. (a) Small Businesses desiring pre-qualification will be assisted:

(1) in preparing standard form for contractor's Statement of Experience and Financial Condition required for contracts made under Office of Architecture and Construction.

(2) in preparing bidder questionnaire form for pre-qualification of bidders for purchases made by Office of Procurement.

(b) Assistance in obtaining licensing, bonding, insurance requirements necessary to bid.

(c) Assistance in preparation of bid proposals.

(d) Assistance in understanding the provisions of the State Contract Act, applicable Labor Codes and Subletting and Sub-Contracting Act as they apply to construction contracts, and the State Purchasing Act as it applies to State procurements.

1896.30. Pre-qualification. Pre-qualification of Small Business Bidders on State Procurements. Notwithstanding the requirements of Section 1890 et. seq. of the California Administrative Code, the Director may modify the requirements for the Experience and Inventory normally required as stated in the Rules for Pre-qualification of Vendors under Section 1890 of the California Administrative Code, if a Small Business can present evidence that they have the ability, resources, and facilities to adequately supply the State.

(a) Such evidence may, among other things, consist of:

(1) Adequate capitalization or financial backing

(2) Bondability

(3) Prior experience of individuals within the Small

Business

(4) Assurances from a supplier of a Small Business that adequate supplies are available to the bidder to meet the needs of the State.

LISTING OF VENDORS THAT QUALIFY AS
SMALL BUSINESSES ACCORDING TO AVAILABLE DOCUMENTATION

<u>Vendor Number</u>	<u>Manufacturer or Nonmanufacturer</u>	<u>Dollar Volume of Awards Under the Small Business Preference During 1975</u>	<u>Dollar Value of Small Business Price Preference</u>	<u>Annual Sales for the Last Complete Fiscal Year Prior to Calendar Year 1975</u>
1*	Nonmanufacturer	\$ 75,368	\$ 3,178	\$ 562,403
2*	Manufacturer	12,609	285	2,107,000
3*	Nonmanufacturer	68,170	1,694	950,000
4**	Manufacturer	54,160	2,480	3,355,280
5*	Nonmanufacturer	37,187	508	500,000
6***	Nonmanufacturer	10,198	378	100,000
7*	Manufacturer	596,346	17,031	3,000,000
8*	Nonmanufacturer	<u>27,494</u>	<u>1,344</u>	946,000
Totals		<u>\$881,532</u>	<u>\$26,898</u>	

* Vendor was successfully competing for purchase orders and contracts issued by the Office of Procurement prior to the inception of the Small Business Program.

** Vendor was bidding on purchase orders and contracts issued by the Office of Procurement prior to the inception of the Small Business Program. However, documentation is not available to determine if the vendor was a successful bidder.

*** Vendor defaulted on purchase agreement and was subsequently eliminated as a pre-qualified bidder by the Office of Procurement.

LISTING OF VENDORS THAT
ARE NOT SMALL BUSINESSES

<u>Vendor Number</u>	<u>Manufacturer or Nonmanufacturer</u>	<u>Dollar Volume Volume of Awards under the Small Business Preference During 1975</u>	<u>Dollar Value of Small Business Price Preference</u>	<u>Annual Sales for the Last Complete Fiscal Year Prior to Calendar Year 1975</u>
9	Nonmanufacturer	\$222,579	\$10,124	\$1,014,000
10	Nonmanufacturer	52,293	2,832	1,584,313
11	Nonmanufacturer	16,368	750	1,100,000
12	Nonmanufacturer	18,506	685	1,162,396
13	Manufacturer	110,754	1,402	5,000,000*
14	Nonmanufacturer	18,361	198	2,500,000
15	Nonmanufacturer	<u>78,032</u>	<u>754</u>	12,000,000**
Totals		<u>\$516,893</u>	<u>\$16,745</u>	

* Number of employees is 65; this exceeds the criteria established by the Director of General Services.

** Also identified as not being a bona fide small business by the Small Business Office. The dollar value of the bidding preference was recovered.

LISTING OF VENDORS WHOSE SMALL-BUSINESS
STATUS IS QUESTIONABLE
BECAUSE OF AFFILIATION WITH OTHER VENDORS

Vendor Number	Manufacturer or Nonmanufacturer	Dollar Volume of Awards under the Small Business Preference During 1975	Dollar Value of Small Business Price Preference	Annual Sales*	Number of Employees	Nature of Affiliation
16	Manufacturer	\$ 39,024	\$ 194	\$827,000	12	Owner also owns another company for which no financial information is available.
17	Nonmanufacturer	26,820	180	445,000	6	Owner also owns 95 percent of another company whose annual sales are \$3,800,000. There is joint use of facilities and personnel.
18	Nonmanufacturer	31,230	625	300,000	4	Owner is the president of two other companies whose annual sales exceed \$1,000,000. Inter-company relations consist of sharing of management, facilities, and inter-company sales.
19	Nonmanufacturer	81,513	4,902	1,000,000	4	Owner also owns another company for which no financial information is available. Inter-company relations consists of sharing of management, facilities, and inter-company sales.
20	Nonmanufacturer	92,499	1,806	350,000	6	President is part-owner of another company for which no financial information is available. Extent of inter-company relations is not known.
21	Nonmanufacturer	33,146	572	1,000,000	20 to 35	Owner is president of another company for which no financial information is available. Extent of inter-company relations is not known.
22	Nonmanufacturer	20,875	560	400,000	8	President is part-owner of another company whose net worth is in excess of \$1,000,000. No other financial information is available. Extent of inter-company relations is not known.
23	Nonmanufacturer	15,270	123	400,000	N/A	Company is a subsidiary of another company for which no financial information is available. Inter-company relations consist of sharing of management. No other information is available.
24	Manufacturer	189,707	5,790	1,500,000	50	Officers also own another company. Inter-company relations consist of sharing of management. No other information is available.
25	Nonmanufacturer	37,380	1,094	850,000	9	President is employed by, and the secretary-treasurer is chairman of the board of, another company whose annual sales are \$1,000,000. Inter-company relations consist of sharing of management and that of landlord-tenant.
26	Nonmanufacturer	89,555	3,215	1,000,000 to 1,500,000	6	Owner is part-owner of another company for which no financial information is available.
27	Nonmanufacturer	<u>42,402</u>	<u>2,713</u>	490,000	19	Company is a wholly-owned subsidiary of another company of which the president is a part-owner. President is also a part-owner of three other companies. Inter-company relations consist of sharing of management and facilities. No other financial information is available except that the combined sales for all of the related companies are in excess of \$1,000,000 per year.
Totals		\$699,422	\$21,774			

*Annual sales are estimates in some cases. Therefore some vendors that appear questionable because of dollar volume and regardless of affiliation may not definitely be identified as not being small business.

LISTING OF VENDORS WHOSE
SMALL-BUSINESS STATUS IS QUESTIONABLE
BECAUSE OF CLASSIFICATION AS A MANUFACTURER

<u>Vendor Number</u>	Dollar Volume of Awards under the Small Business Preference <u>During 1975</u>	Dollar Value of Small Business Price Preference	Annual Sales for the Last Complete Fiscal Year Prior to <u>Calendar Year 1975</u>
28	\$24,000	\$1,000	\$1,500,000
29	28,470	807	2,500,000
30	<u>14,600</u>	<u>557</u>	1,500,000
Totals	<u>\$67,000</u>	<u>\$2,364</u>	

LISTING OF VENDORS WHOSE SMALL BUSINESS
STATUS IS QUESTIONABLE BECAUSE OF
BEING A MANUFACTURER'S REPRESENTATIVE

<u>Vendor Number</u>	Dollar Volume of Awards under the Small Business Preference During 1975	Dollar Value of Small Business Price Preference	Number of Employees	Annual Sales for the Last Complete Fiscal Year Prior to Calendar Year 1975
31	\$ 10,725	\$ 303	2	\$300,000
32	28,048	910	7	300,000
33	19,070	229	3	723,000
34	32,217	958	2	600,000
35	103,394	2,614	3	Not Available
36	43,950	621	4	Not Available
37	72,030	1,685	1	450,000
38	<u>31,095</u>	<u>1,986</u>	9	500,000
Totals	<u>\$340,529</u>	<u>\$9,306</u>		

LISTING OF VENDORS WHO WILL NO LONGER BE ELIGIBLE
FOR THE SMALL BUSINESS PRICE PREFERENCE AFTER JANUARY 1, 1976

<u>Vendor Number</u>	<u>Dollar Volume of Awards Under The Small Business Preference During 1975</u>	<u>Dollar Value of Small Business Price Preference</u>	<u>Reason For Ineligibility After January 1, 1976</u>
39	\$146,250	\$ 5,209	Out of state vendor. No longer eligible for small business preference after January 1, 1976*
40	29,100	1,572	Out of state vendor. No longer eligible for small business preference after January 1, 1976*
41	10,757	0**	Out of state vendor. No longer eligible for small business preference after January 1, 1976*
42	47,924	2,250	Out of state vendor. No longer eligible for small business preference after January 1, 1976*
43	15,631	300	Out of state vendor. No longer eligible for small business preference after January 1, 1976*
44	10,300	200	Out of state vendor. No longer eligible for small business preference after January 1, 1976*
45	<u>64,796</u>	<u>532</u>	Out of state vendor. No longer eligible for small business preference after January 1, 1976*
Subtotal	<u>324,758</u>	<u>10,063</u>	
46	55,370	2,505	As of October 1975 the number of employees had increased to 90.
47	<u>79,061</u>	<u>1,346</u>	Sales exceeded \$1,000,000 for this nonmanufacturer for its fiscal year ended June 30, 1975.
Subtotal	<u>134,431</u>	<u>3,851</u>	
Total	<u>\$459,189</u>	<u>\$13,914</u>	

*Stats. 1975, Ch.308--See Appendix M

**Tied with another vendor for low bid. Award was made based upon the small business price preference which in this case had no monetary value.

LISTING OF VENDORS FOR WHICH
ADEQUATE FINANCIAL INFORMATION WAS NOT AVAILABLE

<u>Vendor Number</u>	<u>Manufacturer or Nonmanufacturer</u>	<u>Dollar Volume of Awards Under The Small Business Preference During 1975</u>	<u>Dollar Value of Small Business Price Preference</u>	<u>Estimated Sales For The Last Complete Fiscal Year Prior To Calendar Year 1975</u>
48	Manufacturer	\$ 59,183	\$ 3,018	\$1,000,000
49	Nonmanufacturer	13,492	51	850,000
50	Manufacturer	27,170	1,348	800,000
51	Nonmanufacturer	35,853	1,238	1,150,000
52	Nonmanufacturer	10,800	340	886,000
53	Nonmanufacturer	16,995	335	817,000
54	Nonmanufacturer	<u>61,230</u>	<u>1,653</u>	900,000
	Subtotal	<u>224,723</u>	<u>7,983</u>	
55	Nonmanufacturer	53,179	858	750,000
56	Nonmanufacturer	17,657	527	250,000
57	Nonmanufacturer	9,999	406	500,000
58	Nonmanufacturer	25,675	500	122,000
59	Nonmanufacturer	25,721	707	50,000
60	Nonmanufacturer	25,636	117	400,000
61	Nonmanufacturer	52,772	1,638	250,000
62	Nonmanufacturer	<u>46,000</u>	<u>2,113</u>	200,000
	Subtotal	<u>256,639</u>	<u>6,866</u>	
63	Nonmanufacturer	32,436	869	Not Available
64	Manufacturer	23,520	368	Not Available
65	Nonmanufacturer	<u>543,652</u>	<u>12,992</u>	Not Available
	Subtotal	<u>599,608</u>	<u>14,229</u>	
	Total	<u>\$1,080,970</u>	<u>\$29,078</u>	

DETAIL LISTING OF QUESTIONABLE CONTRACTORS
REGARDING THEIR SMALL BUSINESS STATUS WHO RECEIVED
CONTRACTS FROM THE OFFICE OF ARCHITECTURE AND CONSTRUCTION
BASED UPON THE SMALL BUSINESS BIDDING PREFERENCE

<u>Contractor Number</u>	<u>Contract Amount</u>	<u>Actual Low Bid</u>	<u>Dollar Value of the Small Business Bidding Preference</u>	<u>Reasons for Questioning the Small Business Status of the Contractor</u>
1	\$269,000	\$266,361	\$ 2,639	The contractor filed a Statement of Experience with the Office of Architecture and Construction which stated that the contractor did \$1,931,800 of business during the preceding three-year period. This figure does <u>not</u> include \$900,000 worth of projects for which the contractor functioned as a consultant.
2*	321,516	317,620	3,896	Partners of this firm are also principals in another enterprise that has gross receipts of approximately \$950,000 per year. If the two concerns are affiliated then the contractor is in excess of the \$2,000,000 volume criteria.
3	461,500	441,100	20,500	Contractor has been associated with three other contracting firms as a joint venture partner or business associate for the last five years. If these four concerns are affiliated then the contractor is in excess of the \$2,000,000 volume criteria.
4*	2,131,986	2,090,000	41,986	Contractor received bid bonding assistance from another contracting firm that was owned by the son of the owner of contractor number 4. Such an arrangement raises questions as to contractor number 4 being independently owned and operated.
5*	<u>1,612,500</u>	<u>1,565,000</u>	<u>47,500</u>	Contractors bid bond was indemnified by another large contractor who was also one of only two subcontractors on the project which was awarded to contractor number 5.
Totals	<u>\$4,796,502</u>	<u>\$4,679,981</u>	<u>\$116,521</u>	

* The Small Business Office performed verifications of the small business status of these three contractors because of complaints filed by competitors. These verifications are discussed on the following pages.

RESULTS OF SMALL BUSINESS OFFICE VERIFICATION OF
THE SMALL BUSINESS STATUS OF CONTRACTORS 2, 4 AND 5

In the case of contractor number 2, the Small Business Office did not obtain adequate financial information regarding the gross receipts of an affiliated firm. If the gross receipts of the affiliate had been combined with those of contractor number 2, the total would have exceeded the \$2 million volume criteria established by the Director.

Contractor number 4 is a case of the owner being related to the owner of another contracting business. Specifically, the owner of contractor number 4 is the father of the owner of another contracting business. In addition, the other contracting business assisted contractor number 4 in obtaining bonding for the project. Without this additional indemnification, contractor number 4 could not have bid on the project.

Contractor number 5 is also an example of a small firm receiving assistance from another firm in obtaining bonding to bid on the project.

The Small Business Office actually conducted two investigations regarding contractor number 5. On August 13, 1975, a hearing was held in Los Angeles to determine the eligibility of contractor number 5 for the small business price preference. Contractor number 5 was ruled ineligible for the preference because the other contractor had the power to control contractor number 5 by reserving the right to furnish bonding assistance. Without such assistance contractor number 5 could not bid on the project; therefore, the two contractors were deemed to be affiliated.

At this point, the Director of General Services could have awarded the contract to the low bidder who had bid \$70,000 less than contractor number 5. However, on September 2, 1975, the Director decided that all the bids would be rejected and new bids would be solicited. The results of the second bid were the same as the first, in that the same low bidder again lost the bid to contractor number 5 because of the small business price preference. The low bidder filed another complaint and the Small Business Office conducted another investigation. The circumstances surrounding the second bid were the same as the first bid with one technical difference. This time the other contractor unconditionally agreed (rather than reserving the right) to furnish bonding assistance to contractor number 5 in the event they were the successful bidder. Under these circumstances the Director decided that the two contractors were not affiliated even though the large contractor was also one of only two subcontractors on the project.

On October 21, 1975, the Director awarded the project to contractor number 5. The additional cost to the State for the small business price preference was \$47,500.

DEFINITION OF "MEAT MANUFACTURER"
BY THE OFFICE OF PROCUREMENT

Title 2, Article 1, Section 1896 (g), of the California Administrative Code defines the term "non-manufacturer" for the purpose of determining small business preference. "Manufacturer" is defined only by exclusion and therefore this term will be given its common meaning.

Accordingly, for the purposes of determining whether a bidder qualifies under the small business preference as a manufacturer, the following criteria is established to define those functions which will be construed as manufacturing functions in the meat industry:

1. The bidder must perform a function which results in a substantial change in the form of the product.
2. The bidder must perform a function which results in a change in the identity (name) of the product, commonly accepted and used in the meat industry.

In the meat industry the manufacturing functions may be divided into two general categories. Meat may be either fabricated into different forms and cuts or processed into various products. The application of the manufacturing function produces changes in the product which can be identified. The criteria relates to those changes and determines the manner in which the manufacturers preference is to be applied.

All requests for manufacturers' preference must meet the above criteria in order to be considered. This criteria will be used to differentiate between manufacturing and non-manufacturing or distributor type functions.

SUMMARY OF RESPONSES TO QUESTIONNAIRE
SENT TO A RANDOM SAMPLE OF VENDORS
IDENTIFIED BY THE SMALL BUSINESS PROCUREMENTS
AND CONTRACTS OFFICE AS BEING "SMALL BUSINESSES"

The following is a series of short statements about the vendors' relationships with the Small Business Procurements and Contracts Office and their business history with the State of California. A total of 359 questionnaires were sent out, and 228 replies were received. Some respondents did not answer all questions. The responses are tabulated below.

	<u>Number of Responses</u>	<u>Percent of Total Responses</u>
1. How familiar are you with the Small Business Procurements and Contracts Office?		
A. Very familiar	5	2%
B. Moderately familiar	46	20
C. Not very familiar	85	38
D. Totally unfamiliar	89	39
E. Unable to respond	<u>3</u>	<u>1</u>
Total	<u>228</u>	<u>100%</u>
2. How often did you have contact with the Small Business Office during 1975?		
A. More than six times	3	2%
B. Three to six times	16	7
C. Once or twice	34	15
D. No contact	169	75
E. Unable to respond	<u>3</u>	<u>1</u>
Total	<u>225</u>	<u>100%</u>

	<u>Number of Responses</u>	<u>Percent of Total Responses</u>
3. If you have had contact with the Small Business Office, how would you describe the experience?		
A. Very helpful	13	9%
B. Moderately helpful	28	20
C. Not very helpful	6	4
D. No help at all	8	6
E. Unable to respond	<u>87</u>	<u>61</u>
Total	<u>142</u>	<u>100%</u>
4. How much business did you do with the State of California prior to May 1974?		
A. Less than \$1,000 per year	46	21%
B. Between \$1,000 and \$10,000 per year	81	36
C. More than \$10,000 per year	32	14
D. None	53	24
E. Unable to respond	<u>10</u>	<u>5</u>
Total	<u>222</u>	<u>100%</u>
5. How much business did you do with the State of California in 1975?		
A. Less than \$1,000 per year	56	25%
B. Between \$1,000 and \$10,000 per year	80	35
C. More than \$10,000 per year	44	20
D. None	42	19
E. Unable to respond	<u>3</u>	<u>1</u>
Total	<u>225</u>	<u>100%</u>
6. If you do more business now with the State of California than you did prior to May 1974, how much of this increase is due to the efforts of the Small Business Office?		
A. Most	5	3%
B. Some	7	3
C. Very little	12	6
D. None	107	56
E. Unable to respond	<u>61</u>	<u>32</u>
Total	<u>192</u>	<u>100%</u>

	<u>Number of Responses</u>	<u>Percent of Total Responses</u>
7. How did you become aware of the Small Business Office?		
A. Representative of the Small Business Office	6	3%
B. Literature from the Small Business Office	41	20
C. Periodicals or other publications	29	14
D. Through other businesses	25	12
E. Other (explain)	20	9
F. Unable to respond	<u>88</u>	<u>42</u>
Total	<u>209</u>	<u>100%</u>
8. Do you know if your business is considered a small business under the criteria developed by the Director of General Services?		
A. Yes	173	77%
B. No	<u>53</u>	<u>23</u>
Total	<u>226</u>	<u>100%</u>
9. Do you know that small businesses are entitled to a five percent price preference when bidding on state purchases?		
A. Yes	105	50%
B. No	<u>107</u>	<u>50%</u>
Total	<u>212</u>	<u>100%</u>
10. Which of the following services are you aware are offered by the Small Business Office?		
A. Assist small businesses in preparing contractor's statement of experience and financial condition	20	9%
B. Assist in preparing bidder questionnaire forms for prequalification	26	11
C. Assist in obtaining licensing, bonding and insurance requirements necessary to bid	16	7

	<u>Number of Responses</u>	<u>Percent of Total Responses</u>
D. Assist in preparing bid proposals	23	10%
E. Assist in understanding the State Contract Act, Labor Codes, the Sub-Contracting Act, and the State Purchasing Act as it applies to state procurements	26	11
11. Approximately what was the maximum number of employees you employed at any one time during 1975?		
A. 5 or less	77	35%
B. 6 to 10	48	21
C. 11 to 25	62	28
D. 26 to 50	26	12
E. More than 50	<u>10</u>	<u>4</u>
Total	<u>223</u>	<u>100%</u>
12. Approximately what were your annual receipts during 1975?		
A. Less than \$100,000	37	16%
B. \$100,000 to \$500,000	84	38
C. \$500,000 to \$1,000,000	64	29
D. \$1,000,000 to \$5,000,000	33	15
E. More than \$5,000,000	<u>5</u>	<u>2</u>
Total	<u>223</u>	<u>100%</u>

AMENDMENT TO THE SMALL BUSINESS
PROCUREMENT AND CONTRACT ACT

Stats. 1975, Ch. 308

CHAPTER 308

An act to amend Section 14837 of the Government Code, relating to small business procurement and contracts.

(Approved by Governor August 22, 1975. Filed with Secretary of State August 22, 1975.)*

LEGISLATIVE COUNSEL'S DIGEST

SB 520, Petris. Small business procurement and contracts.

Under existing law, for the purposes of the Small Business Procurement and Contract Act, the term "small business" is defined to mean a business which is independently owned and operated, and which is not dominant in its field of operation. This bill would define the term to include only such businesses in which the principal office is located in California, and the officers are domiciled in California.

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

SECTION 1. Section 14837 of the Government Code is amended to read:

14837. As used in this chapter:

(a) "Department" means the Department of General Services.

(b) "Director" means the Director of General Services.

(c) "Small business" means a business, in which the principal office is located in California, and the officers of such business are domiciled in California, which is independently owned and operated, and which is not dominant in its field of operation.

In addition to the foregoing criteria the director, in making a detailed definition, shall use these criteria, among others:

(1) Numbers of employees.

(2) Dollar volume of business.

The maximum number of employees and the maximum dollar volume which a small business may have under the definition shall vary from industry to industry to the extent necessary to reflect differing characteristics of such industries and the director may take account of other relevant factors as determined by regulation.

* Became effective January 1, 1976.

Office of the Auditor General

cc: Members of the Legislature
Office of the Governor
Office of the Lieutenant Governor
Secretary of State
State Controller
State Treasurer
Legislative Analyst
Director of Finance
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Assembly Majority/Minority Consultants
Senate Majority/Minority Consultants
California State Department Heads
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