

AMENDED IN SENATE SEPTEMBER 13, 2001
AMENDED IN SENATE SEPTEMBER 12, 2001
AMENDED IN SENATE SEPTEMBER 7, 2001
AMENDED IN SENATE AUGUST 31, 2001
AMENDED IN ASSEMBLY MAY 31, 2001
AMENDED IN ASSEMBLY APRIL 16, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 1084

Introduced by Assembly Member Wesson
(Coauthor: Senator Chesbro)

February 23, 2001

An act to amend Sections 14836, 14837, 14838.5, 14839, 14839.1, 14840, 14842, and 14842.5 of, and to repeal and add Section 14838 of, the Government Code, and to amend Sections 2000 and 2001 of, and to add Sections 2002 and 10116 to, the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1084, as amended, Wesson. Public contracts.

(1) Existing law requires state agencies to give small businesses a 5% preference in contracts for construction, the procurement of goods, or the delivery of services.

This bill would include microbusinesses under those provisions, and revise annual goals for the program. The bill would also add related definitions and make related changes.

This bill would also authorize a local agency to provide for a small business preference in construction, the procurement of goods, or the delivery of services, and to establish a subcontracting participation goal for small businesses on contracts with a preference for those bidders who meet the goal.

This bill would require an awarding department to report to the Governor and the Legislature on the level of participation by business enterprises, by race, ethnicity, and gender of owner, in specified contracts.

(2) The bill would state legislative intent to enact legislation participation of small businesses in public contracting. The bill would also state the intent of the Legislature to act in conformity with certain public contracting recommendations.

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

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

1 SECTION 1. Section 14836 of the Government Code is
2 amended to read:

3 14836. (a) The Legislature hereby declares that it serves a
4 public purpose, and it is of benefit to the state, to promote and
5 facilitate the fullest possible participation by all citizens in the
6 affairs of the State of California in every possible way. It is also
7 essential that opportunity is provided for full participation in our
8 free enterprise system by small business enterprises.

9 (b) Further, it is the declared policy of the Legislature that the
10 state should aid, counsel, assist, and protect, to the maximum
11 extent possible, the interests of small business concerns, including
12 microbusinesses, in order to preserve free competitive enterprise
13 and to ensure that a fair proportion of the total purchases and
14 contracts or subcontracts for property and services for the state be
15 placed with these enterprises.

16 SEC. 2. Section 14837 of the Government Code is amended
17 to read:

18 14837. As used in this chapter:

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

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

21 (c) "Manufacturer" means a business that is both of the
22 following:



1 (1) Primarily engaged in the chemical or mechanical
2 transformation of raw materials or processed substances into new
3 products.

4 (2) Classified between Codes 2000 to 3999, inclusive, of the
5 Standard Industrial Classification (SIC) Manual published by the
6 United States Office of Management and Budget, 1987 edition.

7 (d) (1) “Small business” means an independently owned and
8 operated business, which is not dominant in its field of operation,
9 the principal office of which is located in California, the officers
10 of which are domiciled in California, and which, together with
11 affiliates, has 100 or fewer employees, and average annual gross
12 receipts of ten million dollars (\$10,000,000) or less over the
13 previous three years, or is a manufacturer, as defined in
14 subdivision ~~(f)~~(c), with 100 or fewer employees.

15 (2) “Microbusiness” is a small business that, together with
16 affiliates, has average annual gross receipts of two million five
17 hundred thousand dollars (\$2,500,000) or less over the previous
18 three years, or is a manufacturer, as defined in subdivision ~~(f)~~(c),
19 with 25 or fewer employees.

20 (3) The director shall conduct a biennial review of the average
21 annual gross receipt levels specified in this subdivision and may
22 adjust that level to reflect changes in the California Consumer
23 Price Index for all items. To reflect unique variations or
24 characteristics of different industries, the director may establish,
25 to the extent necessary, either higher or lower qualifying standards
26 than those specified in this subdivision, or alternative standards
27 based on other applicable criteria.

28 (4) Standards applied under this subdivision shall be
29 established by regulation, in accordance with Chapter 3.5
30 (commencing with Section 11340) of Part 1, and shall preclude the
31 qualification of businesses that are dominant in their industry.

32 SEC. 3. Section 14838 of the Government Code is repealed.

33 SEC. 3.1. Section 14838 is added to the Government Code, to
34 read:

35 14838. In order to facilitate the participation of small
36 business, including microbusiness, in the provision of goods,
37 information technology, and services to the state, and in the
38 construction (including alteration, demolition, repair, or
39 improvement) of state facilities, the directors of General Services



1 and other state agencies that enter those contracts, each within their
2 respective areas of responsibility, shall do all of the following:

3 (a) Establish goals, consistent with those established by the
4 Office of Small Business Certification and Resources, for the
5 extent of participation of small businesses, including
6 microbusinesses, in the provision of goods, information
7 technology, and services to the state, and in the construction of
8 state facilities.

9 (b) Provide for small business preference, or nonsmall business
10 preference for bidders that provide for small business and
11 microbusiness subcontractor participation, in the award of
12 contracts for goods, information technology, services, and
13 construction, as follows:

14 (1) In solicitations where an award is to be made to the lowest
15 responsible bidder meeting specifications, the preference to small
16 business and microbusiness shall be 5 percent of the lowest
17 responsible bidder meeting specifications. The preference to
18 nonsmall business bidders that provide for small business or
19 microbusiness subcontractor participation shall be, up to a
20 maximum of 5 percent of the lowest responsible bidder meeting
21 specifications, determined according to rules and regulations
22 established by the Department of General Services.

23 (2) In solicitations where an award is to be made to the highest
24 scored bidder based on evaluation factors in addition to price, the
25 preference to small business or microbusiness shall be 5 percent
26 of the highest responsible bidder's total score. The preference to
27 nonsmall business bidders that provide for small business or
28 microbusiness subcontractor participation shall be up to a
29 maximum 5 percent of the highest responsible bidder's total score,
30 determined according to rules and regulations established by the
31 Department of General Services.

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

35 (4) The preference under paragraph (1) may not exceed fifty
36 thousand dollars (\$50,000) for any bid, and the combined cost of
37 preferences granted pursuant to paragraph (1) and any other
38 provision of law may not exceed one hundred thousand dollars
39 (\$100,000). In bids in which the state has reserved the right to
40 make multiple awards, this fifty thousand dollar (\$50,000)



1 maximum preference cost shall be applied, to the extent possible,
2 so as to maximize the dollar participation of small businesses,
3 including microbusiness, in the contract award.

4 (c) Give special consideration to small businesses and
5 microbusinesses by both:

6 (1) Reducing the experience required.

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

8 (d) Give special assistance to small businesses and
9 microbusinesses in the preparation and submission of the
10 information requested in Section 14310.

11 (e) Under the authorization granted in Section 10163 of the
12 Public Contract Code, make awards, whenever feasible, to small
13 business and microbusiness bidders for each project bid upon
14 within their prequalification rating. This may be accomplished by
15 dividing major projects into subprojects so as to allow a small
16 business or microbusiness contractor to qualify to bid on these
17 subprojects.

18 (f) Small business and microbusiness bidders qualified in
19 accordance with the provisions of this chapter shall have
20 precedence over nonsmall business bidders in that the application
21 of any bidder preference for which nonsmall business bidders may
22 be eligible under this provision or any other provision of law shall
23 not result in the denial of the award to a small business or
24 microbusiness bidder. In the event of a precise tie between the low
25 responsible bid of a bidder meeting specifications of a small
26 business or microbusiness, and the low responsible bid of a bidder
27 meeting the specifications of a disabled veteran-owned small
28 business or microbusiness, the contract shall be awarded to the
29 disabled veteran-owned small business or microbusiness. This
30 provision applies if the small business or microbusiness bidder is
31 the lowest responsible bidder, as well as if the small business or
32 microbusiness bidder is eligible for award as the result of
33 application of the small business and microbusiness bidder
34 preference granted by subdivision (b).

35 SEC. 4. Section 14838.5 of the Government Code is amended
36 to read:

37 14838.5. (a) Notwithstanding the advertising, bidding, and
38 protest provisions of Chapter 6 (commencing with Section 14825)
39 of this code and Chapter 2 (commencing with Section 10290) and
40 Chapter 3 (commencing with Section 12100) of Part 2 of Division



1 2 of the Public Contract Code, a state agency may award a contract
2 for the acquisition of goods, services, or information technology
3 that has an estimated value of greater than five thousand dollars
4 (\$5,000), but less than two hundred thousand dollars (\$200,000)
5 for construction contracts and less than one hundred thousand
6 dollars (\$100,000) for all other contracts, to a certified small
7 business, including a microbusiness, or to a disabled veteran
8 business enterprise, as long as the agency obtains price quotations
9 from two or more certified small businesses, including
10 microbusinesses, or from disabled veterans business enterprises.

11 (b) In carrying out subdivision (a), state agencies shall consider
12 a responsive offer timely received from a responsible certified
13 small business, including a microbusiness, or from a disabled
14 veteran business enterprise.

15 (c) If the estimated cost to the state is less than five thousand
16 dollars (\$5,000) for the acquisition of goods, services, or
17 information technology, or a greater amount as administratively
18 established by the director, a state agency shall obtain at least two
19 price quotations from responsible suppliers whenever there is
20 reason to believe a response from a single source is not a fair and
21 reasonable price.

22 SEC. 5. Section 14839 of the Government Code is amended
23 to read:

24 14839. There is hereby established within the department the
25 Office of Small Business Certification and Resources. The duties
26 of the office shall include:

27 (a) Compiling and maintaining a comprehensive bidders list of
28 qualified small businesses, and noting which small businesses also
29 qualify as microbusinesses.

30 (b) Coordinating with the Federal Small Business
31 Administration, the Minority Business Development Agency, and
32 the Office of Small Business Development of the Department of
33 Economic and Business Development.

34 (c) Providing technical and managerial aids to small businesses
35 and microbusinesses by conducting workshops on matters in
36 connection with government procurement and contracting.

37 (d) Assisting small businesses and microbusinesses in
38 complying with the procedures for bidding on state contracts.

39 (e) Working with appropriate state, federal, local, and private
40 organizations and business enterprises in disseminating



1 information on bidding procedures and opportunities available to
2 small businesses and microbusinesses.

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

7 (g) Develop, by regulation, other programs and practices that
8 are reasonably necessary to aid and protect the interest of small
9 businesses and microbusinesses in contracting with the state.

10 (h) The information furnished by each contractor requesting a
11 small business or microbusiness preference shall be under penalty
12 of perjury.

13 SEC. 6. Section 14839.1 of the Government Code is amended
14 to read:

15 14839.1. The department shall have sole responsibility for
16 certifying and determining the eligibility of small businesses and
17 microbusinesses under this chapter.

18 SEC. 7. Section 14840 of the Government Code is amended
19 to read:

20 14840. The department shall submit an annual report to the
21 Legislature no later than January 1 of each year containing the
22 following information:

23 (a) Upon request, an up-to-date list of eligible small business
24 bidders by general procurement and construction contract
25 categories, noting company names and addresses and also noting
26 which small businesses also qualify as microbusinesses.

27 (b) By general procurement and construction contract
28 categories, statistics comparing the small business and
29 microbusiness contract participation dollars to the total state
30 contract participation dollars.

31 (c) By awarding department and general procurement and
32 construction categories, statistics comparing the small business
33 and microbusiness contract participation dollars to the total state
34 contract participation dollars.

35 (d) Any recommendations for changes in statutes or state
36 policies to improve opportunities for small businesses and
37 microbusinesses.

38 (e) A statistical summary of small businesses and
39 microbusinesses certified for state contracting by the number of



1 employees at the business for each of the following categories:
2 0–25, 26–50, 51–75, and 76–100.

3 (f) To the extent feasible, beginning in the year 2002, the
4 number of contracts awarded by the department in the categories
5 specified in subdivision (e).

6 (g) The number of contracts and dollar amounts awarded
7 annually pursuant to Section 14838.5 to small businesses,
8 microbusinesses, and disabled veteran business enterprises.

9 SEC. 8. Section 14842 of the Government Code is amended
10 to read:

11 14842. (a) A business that has obtained classification as a
12 small business or microbusiness by reason of having furnished
13 incorrect supporting information or by reason of having withheld
14 information, and which knew, or should have known, the
15 information furnished was incorrect or the information withheld
16 was relevant to its request for classification, and which by reason
17 of that classification has been awarded a contract to which it would
18 not otherwise have been entitled, shall do all of the following:

19 (1) Pay to the state any difference between the contract amount
20 and what the state’s costs would have been if the contract had been
21 properly awarded.

22 (2) In addition to the amount described in subdivision (a), be
23 assessed a penalty in an amount of not more than 10 percent of the
24 amount of the contract involved.

25 (3) Be ineligible to transact any business with the state for a
26 period of not less than three months and not more than 24 months.

27 (b) All payments to the state pursuant to paragraph (1) of
28 subdivision (a) shall be deposited in the fund out of which the
29 contract involved was awarded.

30 (c) All payments to the state pursuant to paragraph (2) of
31 subdivision (a) shall be deposited in the state General Fund.

32 (d) Prior to the imposition of any sanctions under subdivision
33 (a), a business shall be entitled to a public hearing and to at least
34 five working days’ notice of the time and place thereof. The notice
35 shall state the reasons for the hearing.

36 SEC. 9. Section 14842.5 of the Government Code is amended
37 to read:

38 14842.5. (a) It shall be unlawful for a person to do any of the
39 following:



1 (1) Knowingly and with intent to defraud, fraudulently obtain,
2 retain, attempt to obtain or retain, or aid another in fraudulently
3 obtaining or retaining or attempting to obtain or retain,
4 certification as a small business or microbusiness enterprise for the
5 purposes of this chapter.

6 (2) Willfully and knowingly make a false statement with the
7 intent to defraud, whether by affidavit, report, or other
8 representation, to a state official or employee for the purpose of
9 influencing the certification or denial of certification of any entity
10 as a small business or microbusiness enterprise.

11 (3) Willfully and knowingly obstruct, impede, or attempt to
12 obstruct or impede, any state official or employee who is
13 investigating the qualifications of a business entity that has
14 requested certification as a small business or microbusiness
15 enterprise.

16 (4) Knowingly and with intent to defraud, fraudulently obtain,
17 attempt to obtain, or aid another person in fraudulently obtaining
18 or attempting to obtain, public moneys to which the person is not
19 entitled under this chapter.

20 (b) Any person who is found by the department to have violated
21 any of the provisions of subdivision (a) is subject to a civil penalty
22 of not more than five thousand dollars (\$5,000).

23 (c) If a contractor, subcontractor, supplier, subsidiary, or
24 affiliate thereof, has been found by the department to have violated
25 subdivision (a) and that violation occurred within three years of
26 another violation of subdivision (a) found by the department, the
27 department shall prohibit that contractor, subcontractor, supplier,
28 subsidiary, or affiliate thereof, from entering into a state project or
29 state contract and from further bidding to a state entity, and from
30 being a subcontractor to a contractor for a state entity and from
31 being a supplier to a state entity.

32 SEC. 10. Section 2002 is added to the Public Contract Code,
33 to read:

34 2002. Notwithstanding any other provision of law requiring
35 a local agency to award contracts to the lowest responsible bidder,
36 any local agency may do any of the following in facilitating
37 contract awards to small businesses:

38 (a) Provide for a small business preference in construction, the
39 procurement of goods, or the delivery of services where
40 responsibility and quality are equal. The preference to a small



1 business shall be up to 5 percent of the lowest responsible bidder
 2 meeting specifications.

3 (b) Establish a subcontracting participation goal for small
 4 businesses on contracts and grant a preference, up to a maximum
 5 of 5 percent, to those bidders who meet the goal.

6 (c) Require bidders to make good faith effortsto meet a
 7 subcontracting participation goal for small business contracts.
 8 Bidders that fail to meet the goal shall demonstrate that they made
 9 good faith efforts to utilize small business contractors.

10 SEC. 11. Section 10116 is added to the Public Contract Code,
 11 to read:

12 10116. (a) On January 1, of each year, each awarding
 13 department shall report to the Governor and the Legislature on the
 14 level of participation of business enterprises, by race, ethnicity,
 15 and gender of owner, in contracts as identified in this article for the
 16 fiscal year beginning July 1 and ending June 30. In addition, the
 17 report shall contain the levels of participation of business
 18 enterprises, by race, ethnicity, and gender of owner, for the
 19 following categories of contracts:

- 20 (1) Construction.
- 21 (2) Purchases of materials, supplies, or equipment.
- 22 (3) Professional services.
- 23 (4) All contracts for a dollar amount of less than twenty-five
 24 thousand dollars (\$25,000).

25 (b) Awarding departments are prohibited from using the data
 26 compiled under this section to discriminate or provide a preference
 27 in the awarding of any contracts.

28 (c) Contractors are prohibited from using the information
 29 compiled under this section to discriminate or provide a preference
 30 in the solicitation or acceptance of bids for subcontracting, or for
 31 materials or equipment, on the basis of race, color, sex, ethnic
 32 origin, or ancestry.

33 SEC. 12. It is the intent of the Legislature to enact legislation
 34 that will authorize local governmental entities to establish
 35 programs to increase the participation of small businesses in public
 36 contracting. In enacting that legislation, as well as in the other
 37 provisions of this act, it is the intent of the Legislature to act in
 38 conformity with the public contracting recommendations made by
 39 the Governor’s Task Force on Diversity and Outreach in its report



1 entitled, “Report to the Governor on Outreach Options” (August
2 1, 2000) and with existing Executive Orders.

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