

Introduced by Senator Negrete McLeod

February 27, 2009

An act to amend, repeal, and add Sections 14838.5 and 14839 of, and to add and repeal Chapter 15 (commencing with Section 8899.50) of Division 1 of Title 2 of, the Government Code, and to amend Section 19404 of the Welfare and Institutions Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 755, as introduced, Negrete McLeod. State contracts: participation goals: persons with developmental disabilities business enterprises.

Existing law establishes participation goals for various enterprises to participate in contracts with state departments awarded for construction, services, materials, supplies, equipment, alterations, repairs, or improvements.

This bill would establish statewide participation goals of not less than 1% for persons with developmental disabilities business enterprises to participate in contracts awarded by a state agency for goods and services, and require, until June 30, 2014, that each state agency awarding contracts take specified actions to encourage that participation, as provided.

This bill would impose a civil penalty for initial and subsequent violations of providing false or fraudulent information with respect to the qualification of a persons with developmental disabilities business enterprise, and would prohibit the person or entity that made the false or fraudulent statement from bidding on or participating in state contracts for specified periods of time.

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

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

SECTION 1. Chapter 15 (commencing with Section 8899.50) is added to Division 1 of Title 2 of the Government Code, to read:

CHAPTER 15. PERSONS WITH DEVELOPMENTAL DISABILITIES
BUSINESS ENTERPRISE PARTICIPATION GOALS FOR STATE
CONTRACTS

8899.50. (a) This chapter shall be known, and may be cited, as the Persons with Developmental Disabilities Business Enterprise Program.

(b) The Legislature finds and declares all of the following:

(1) There were 215,000 persons with developmental disabilities in California in 2006, and of these persons, 86,265 were persons of working age, between the ages of 22 and 61 years.

(2) Fewer than 20,000, or 23 percent, of the persons of working age with developmental disabilities engage in any form of employment.

(3) Many persons with developmental disabilities have expressed their desire to work and earn wages as productive members of society.

(4) Persons with developmental disabilities include persons whose disabilities present significant challenges to locate and secure employment.

(5) Often, larger than the challenge of the disability itself, is the lack of recognition by employers of the skills, abilities, and dedication of persons with developmental disabilities to work effectively.

(6) The State of California has an opportunity to take proactive steps to contract with companies that are owned, managed, or controlled by, or that employ, persons with developmental disabilities.

(c) It is the intent of the Legislature to do all of the following:

(1) Recognize the potential contribution of persons with developmental disabilities to the workforce in the state.

(2) Encourage state agencies to contract with companies owned, managed, or controlled by, or that employ, persons with developmental disabilities, thereby encouraging greater independence and community involvement.

1 (3) Reduce pressure on the state budget by encouraging persons
2 with developmental disabilities to earn wages, pay taxes, and
3 collect fewer state benefits.

4 (4) Have state agencies take all practical actions to meet or
5 exceed the persons with developmental disabilities business
6 enterprise participation goals of not less than 1 percent of the
7 number of contracts for goods or services awarded by state
8 agencies.

9 8899.51. As used in this chapter:

10 (a) "Awarding department" means any state agency, department,
11 governmental entity, or other officer or entity empowered by law
12 to enter into contracts for, and on behalf of, the State of California.

13 (b) "Contract" includes any agreement or joint development
14 agreement to provide goods or services in the performance of a
15 contract, franchise, concession, or lease granted, let, or awarded
16 for, and on behalf of, the State of California. "Goods or services"
17 include labor, services, materials, supplies, equipment, or other
18 goods.

19 (c) "Commercially useful function" means a function performed
20 by a persons with developmental disabilities business enterprise
21 in which the persons with developmental disabilities business
22 enterprise does all of the following:

23 (1) Is responsible for the execution of a distinct element of the
24 work of the contract for goods or services.

25 (2) Carries out its obligation by actually performing, managing,
26 or supervising the work involved.

27 (3) Performs work that is normal for its business services and
28 functions.

29 (4) Is not subcontracting a portion of the work that is greater
30 than that expected to be subcontracted by normal industry practice.

31 A persons with developmental disabilities business enterprise
32 shall not be considered to perform a commercially useful function
33 if its role is limited to that of an extra participant in a transaction,
34 contract, or project through which funds are passed in order to
35 obtain the appearance of participation by a persons with
36 developmental disabilities business enterprise.

37 (d) "Contractor" means any individual, firm, partnership, joint
38 venture, corporation, limited liability company, organization, or
39 other person or entity, or combination thereof, that submits a bid
40 and enters into a contract. A contractor includes a subcontractor

1 or a supplier that provides goods or services with respect to a
2 contract.

3 (e) “Developmental disability” means a disability, specified in
4 subdivision (a) of Section 4512 of the Welfare and Institutions
5 Code, rendering the affected person eligible to participate in
6 programs of rehabilitation, education, or social services conducted
7 by or on behalf of a public agency.

8 (f) “Goal” means a numerically expressed objective that
9 awarding departments and contractors are required to make efforts
10 to achieve.

11 (g) “Persons with developmental disabilities business enterprise”
12 means a business or organization certified pursuant to regulations
13 described in Section 8899.54 as meeting any of the following:

14 (1) A business concern at least 51 percent owned by one or more
15 persons with a developmental disability.

16 (2) A business concern managed by, and the daily business
17 operations controlled by, one or more persons with a developmental
18 disability.

19 (3) A community-based nonprofit organization that employs
20 persons with a developmental disability that meets any of the
21 following conditions:

22 (A) The organization operates under a special certificate issued
23 pursuant to Section 1191.5 of Title 29 of the United States Code.

24 (B) The organization has a special license issued to it under
25 Section 214 of Title 29 of the United States Code.

26 (C) The organization meets the criteria of Chapter 13
27 (commencing with Section 4850) of Division 4.5 of the Welfare
28 and Institutions Code for providing habilitation services.

29 8899.52. Notwithstanding any other law, all contracts awarded
30 by an awarding department shall have statewide participation goals
31 of not less than 1 percent for persons with developmental
32 disabilities business enterprises. These goals apply to the total
33 number of contracts granted, let, or awarded each year by the
34 awarding department.

35 8899.53. In order to encourage the participation of persons
36 with developmental disabilities business enterprises in state
37 contracts for goods or services, each awarding department shall,
38 consistent with Section 14839, do all of the following:

39 (a) Advertise all upcoming opportunities to bid on competitively
40 bid contracts in the California State Contracts Register and include

1 in the advertisement an Internet link to information for prospective
2 bidders, including, but not limited to, general bidding procedures
3 and how to properly prepare a bid for those contracts.

4 (b) Provide information to persons with developmental
5 disabilities business enterprises regarding training and technical
6 assistance that is available to assist these persons with
7 developmental disabilities business enterprises in understanding
8 and bidding on contracts.

9 8899.54. (a) The Department of General Services shall adopt
10 regulations for the purpose of implementing this chapter. The
11 Department of General Services shall consult with the State
12 Department of Developmental Services with respect to the
13 implementation of this chapter and the adoption of these
14 regulations. Emergency regulations consistent with this section
15 may be adopted without review and approval by the Office of
16 Administrative Law if adopted within 90 days of the effective date
17 of this chapter.

18 (b) The regulations shall include the process and procedures for
19 certifying persons with developmental disabilities business
20 enterprises, consistent with and in coordination with the
21 certification process and procedures for small businesses and
22 disabled veteran business enterprises in Section 14839.

23 (c) The regulations shall require a persons with developmental
24 disabilities business enterprise to provide goods or services that
25 contribute to the fulfillment of the contract requirements by
26 performing a commercially useful function.

27 8899.55. In implementing this chapter, the awarding department
28 shall utilize existing resources such as the State Department of
29 Developmental Services.

30 8899.56. (a) A person or entity shall not:

31 (1) Knowingly and with intent to defraud, fraudulently obtain,
32 attempt to obtain, or aid another person or entity in fraudulently
33 obtaining or attempting to obtain, public moneys, contracts, or
34 funds expended under a contract, that are awarded by an awarding
35 department, to which the person or entity is not entitled under this
36 chapter.

37 (2) Knowingly and with intent to defraud, fraudulently represent
38 participation of a persons with developmental disabilities business
39 enterprise in order to obtain or retain a contract.

1 (3) Willfully and knowingly make or subscribe to any statement,
2 declaration, or other document that is fraudulent or false as to any
3 material matter, whether or not that falsity or fraud is committed
4 with the knowledge or consent of the person authorized or required
5 to present the declaration, statement, or document.

6 (4) Willfully and knowingly aid or assist in, or procure, counsel,
7 or advise the preparation or presentation of a declaration, statement,
8 or other document that is fraudulent or false as to any material
9 matter, regardless of whether that falsity or fraud is committed
10 with the knowledge or consent of the person authorized or required
11 to present the declaration, statement, or document.

12 (5) Willfully and knowingly obstruct, impede, or attempt to
13 obstruct or impede, any state official or employee who is
14 investigating the qualifications of a person or entity represented
15 to be a persons with developmental disabilities business enterprise.

16 (6) Establish, or knowingly aid in the establishment of, or
17 exercise control over, a person or entity found to have violated
18 any of paragraphs (1) to (5), inclusive.

19 (b) Any person or entity that violates any of the provisions of
20 subdivision (a) shall be liable for a civil penalty of not less than
21 ten thousand dollars (\$10,000) or more than thirty thousand dollars
22 (\$30,000) for the first violation, and a civil penalty of not less than
23 thirty thousand dollars (\$30,000) or more than fifty thousand
24 dollars (\$50,000) for each additional or subsequent violation. A
25 person or entity that violates any of the provisions of subdivision
26 (a) shall pay all costs and attorney's fees incurred by the plaintiff
27 in a civil action brought pursuant to this section, including costs
28 incurred by the awarding department for any investigations that
29 led to the finding of the violation.

30 (c) (1) A person or entity, participating as either a contractor,
31 subcontractor, or supplier, that violates any of the provisions of
32 subdivision (a) shall not bid on a state contract or project for a
33 period of not less than three years. An additional or subsequent
34 violation shall extend the periods of suspension for a period of not
35 less than five years. The suspension shall apply to the principals
36 of the business and any subsequent business formed or financed
37 by, or affiliated with, those principals.

38 (2) A person or entity that fails to satisfy the penalties, costs,
39 and attorney's fees imposed pursuant to subdivision (b) shall be

1 prohibited from further contracting with the state until those
2 amounts are paid.

3 (d) The awarding department shall report all alleged violations
4 of this section to the Attorney General who shall determine whether
5 to bring a civil action against any person or entity for violation of
6 this section.

7 (e) An awarding department shall not enter into any contract
8 with a contractor suspended for violating this section during the
9 period of the contractor's suspension. An awarding department
10 shall not award a contract to any contractor utilizing the services
11 of any person or entity suspended for violating this section during
12 the period of the suspension.

13 8899.57. (a) Each awarding department shall annually report
14 to the Department of General Services on the level of participation
15 by persons with developmental disabilities business enterprises in
16 contracts. The information reported shall include, but not be limited
17 to, the following:

18 (1) The percentage of contracts awarded to persons with
19 developmental disabilities business enterprises, including the
20 number of contracts awarded to each type of business enterprise
21 defined in paragraphs (1) to (3), inclusive, of subdivision (g) of
22 Section 8899.51.

23 (2) A description of each contract, including the number of
24 persons with developmental disabilities employed, the nature of
25 the work performed, the wages paid and other employee benefits
26 provided, and the work setting, including the extent to which the
27 work performed by persons with developmental disabilities was
28 in integrated work as defined in subdivision (o) of Section 4851
29 of the Welfare and Institutions Code.

30 (3) If the established goal is not being met, the reasons for the
31 awarding department's inability to achieve the standards and the
32 remedial steps to be taken.

33 (b) Beginning January 1, 2011, and on January 1 of each year
34 thereafter, the Department of General Services shall, in consultation
35 with the Department of Developmental Services, report to the
36 Governor and the Legislature, by department, on the level of
37 participation by persons with developmental disabilities business
38 enterprises under this chapter, including the information required
39 by subdivision (a).

1 8899.58. Notwithstanding any other provision of this chapter,
2 the failure of an awarding department to meet the goals established
3 under this chapter shall not affect the validity or enforceability of
4 any contract subject to this chapter.

5 8899.59. This chapter shall become inoperative on July 1, 2014,
6 and is repealed as of January 1, 2015.

7 SEC. 2. Section 14838.5 of the Government Code is amended
8 to read:

9 14838.5. (a) Notwithstanding the advertising, bidding, and
10 protest provisions of Chapter 6 (commencing with Section 14825)
11 of this code and Chapter 2 (commencing with Section 10290) and
12 Chapter 3 (commencing with Section 12100) of Part 2 of Division
13 2 of the Public Contract Code, a state agency may award a contract
14 for the acquisition of goods, services, or information technology
15 that has an estimated value of greater than five thousand dollars
16 (\$5,000), but less than one hundred thousand dollars (\$100,000),
17 to a certified small business, including a microbusiness, *to a*
18 *persons with developmental disabilities business enterprise*, or to
19 a disabled veteran business enterprise, as long as the agency obtains
20 price quotations from two or more certified small businesses,
21 including microbusinesses, *from two or more persons with*
22 *developmental disabilities business enterprises*, or from two or
23 more disabled veterans business enterprises.

24 (b) In carrying out subdivision (a), state agencies shall consider
25 a responsive offer timely received from a responsible certified
26 small business, including a microbusiness, *from a persons with*
27 *developmental disabilities business enterprise*, or from a disabled
28 veteran business enterprise.

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

36 (d) *This section shall become inoperative on July 1, 2014, and*
37 *is repealed as of January 1, 2015.*

38 SEC. 3. Section 14838.5 is added to the Government Code, to
39 read:

14838.5. (a) Notwithstanding the advertising, bidding, and protest provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 2 (commencing with Section 10290) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than five thousand dollars (\$5,000), but less than one hundred thousand dollars (\$100,000), to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, as long as the agency obtains price quotations from two or more certified small businesses, including microbusinesses, or from two or more disabled veteran business enterprises.

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

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

(d) This section shall become operative on July 1, 2014.

SEC. 4. Section 14839 of the Government Code is amended to read:

14839. There is hereby established within the department the Office of Small Business and Disabled Veteran Business Enterprise Services. The duties of the office shall include:

(a) Compiling and maintaining a comprehensive bidders list of qualified small businesses, *persons with developmental disabilities business enterprises*, and disabled veteran business enterprises, and noting which small businesses also qualify as microbusinesses.

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

(c) Providing technical and managerial aids to small businesses, microbusinesses, *persons with developmental disabilities business*

1 *enterprises*, and disabled veteran business enterprises, by
2 conducting workshops on matters in connection with government
3 procurement and contracting.

4 (d) Assisting small businesses, microbusinesses, *persons with*
5 *developmental disabilities business enterprises*, and disabled
6 veteran business enterprises, in complying with the procedures for
7 bidding on state contracts.

8 (e) Working with appropriate state, federal, local, and private
9 organizations and business enterprises in disseminating information
10 on bidding procedures and opportunities available to small
11 businesses, microbusinesses, *persons with developmental*
12 *disabilities business enterprises*, and disabled veteran business
13 enterprises.

14 (f) Making recommendations to the department and other state
15 agencies for simplification of specifications and terms in order to
16 increase the opportunities for small business, microbusiness,
17 *persons with developmental disabilities business enterprise*, and
18 disabled veteran business enterprise participation.

19 (g) Developing, by regulation, other programs and practices
20 that are reasonably necessary to aid and protect the interest of small
21 businesses, microbusinesses, *persons with developmental*
22 *disabilities business enterprises*, and disabled veteran business
23 enterprises in contracting with the state.

24 (h) Making efforts to develop, in cooperation with associations
25 representing counties, cities, and special districts, a core statewide
26 small business certification application that may be adopted by all
27 participating entities, with any supplemental provisions to be added
28 as necessary by the respective entities.

29 (i) The information furnished by each contractor requesting a
30 small business or microbusiness preference shall be under penalty
31 of perjury.

32 (j) *This section shall become inoperative on July 1, 2014, and*
33 *is repealed as of January 1, 2015.*

34 SEC. 5. Section 14839 is added to the Government Code, to
35 read:

36 14839. There is hereby established within the department the
37 Office of Small Business and Disabled Veteran Business Enterprise
38 Services. The duties of the office shall include:

39 (a) Compiling and maintaining a comprehensive bidders list of
40 qualified small businesses and disabled veteran business

1 enterprises, and noting which small businesses also qualify as
2 microbusinesses.

3 (b) Coordinating with the Federal Small Business
4 Administration, the Minority Business Development Agency, and
5 the Office of Small Business Development of the Department of
6 Economic and Business Development.

7 (c) Providing technical and managerial aids to small businesses,
8 microbusinesses, and disabled veteran business enterprises, by
9 conducting workshops on matters in connection with government
10 procurement and contracting.

11 (d) Assisting small businesses, microbusinesses, and disabled
12 veteran business enterprises, in complying with the procedures for
13 bidding on state contracts.

14 (e) Working with appropriate state, federal, local, and private
15 organizations and business enterprises in disseminating information
16 on bidding procedures and opportunities available to small
17 businesses, microbusinesses, and disabled veteran business
18 enterprises.

19 (f) Making recommendations to the department and other state
20 agencies for simplification of specifications and terms in order to
21 increase the opportunities for small business, microbusiness, and
22 disabled veteran business enterprise participation.

23 (g) Developing, by regulation, other programs and practices
24 that are reasonably necessary to aid and protect the interest of small
25 businesses, microbusinesses, and disabled veteran business
26 enterprises in contracting with the state.

27 (h) Making efforts to develop, in cooperation with associations
28 representing counties, cities, and special districts, a core statewide
29 small business certification application that may be adopted by all
30 participating entities, with any supplemental provisions to be added
31 as necessary by the respective entities.

32 (i) The information furnished by each contractor requesting a
33 small business or microbusiness preference shall be under penalty
34 of perjury.

35 (j) This section shall become operative on July 1, 2014.

36 SEC. 6. Section 19404 of the Welfare and Institutions Code is
37 amended to read:

38 19404. Any state agency, city or county, political subdivision,
39 or district of this state may, without advertising or calling for bids,
40 purchase materials and supplies manufactured and services

1 provided by public or private nonprofit California corporations
2 operating community rehabilitation programs serving persons with
3 disabilities who have indicated an interest in supplying those goods
4 and services and may, on an equitable basis apportion the business
5 among the interested community rehabilitation programs, provided
6 the goods or services meet the specifications and needs of the
7 purchasing agency and are purchased at a fair market price, as
8 determined by the appropriate state or local agency pursuant to
9 *Section 14838.5 of the Government Code*, and provided that the
10 public or private nonprofit California corporations comply with
11 all of the following requirements:

12 (a) (1) Contract work obtained under this section shall be
13 performed by a labor force which is comprised primarily of persons
14 with disabilities, as measured by the percentage of person-hours
15 of direct labor devoted to the contract work.

16 (2) For purposes of this ~~paragraph~~ subdivision, “primarily”
17 means 75 percent or greater.

18 (3) Agree to make those elections permitted of any nonprofit
19 corporation under the federal Insurance Contributions Act and the
20 California Unemployment Insurance Code in order to provide
21 social security and unemployment and disability benefits for its
22 employees commencing with its first contract or purchase order
23 under this section and continuing thereafter. In the event that the
24 nonprofit corporation ceases to provide those benefits, any existing
25 contract or purchase order under this section with the corporation
26 is terminated and no further contracts or purchase orders shall be
27 awarded to that corporation for the period of two years after the
28 corporation ceases to provide the benefits. For the purposes of this
29 subdivision, a person with a disability shall be considered an
30 employee when performing productive work.

31 (4) Provide in its articles of incorporation that at least two of
32 the directors of its board of directors shall be comprised of persons
33 with disabilities or the parents, guardians, or conservators of
34 individuals with disabilities. Directors who are also employees of
35 the nonprofit corporation shall not participate in or be present at
36 discussions of the board of directors concerned with
37 labor-management contract negotiations.

38 (5) Provide for disabled employees of the nonprofit corporation
39 benefits and other employer-employee agreements substantially
40 equal to those benefits and agreements entered into between each

1 nonprofit corporation and the representatives designated by a
2 majority of the employees.

3 (6) Not commit any unfair labor practices as defined in Section
4 8(a) of the National Labor Relations Act.

5 (7) Abide by the provisions of the Federal Fair Labor Standards
6 Act, the Walsh-Healy Public Contract Act, the Wagner O'Day
7 Act, and the regulations of the State Division of Industrial Welfare.

8 (8) *Contract work obtained under this section shall be governed*
9 *by the contracting procedures and limitations in Section 14838.5*
10 *of the Government Code.*

11 (b) For purposes of this section a “person with a disability”
12 means any person, other than a person who is blind, who is so
13 severely incapacitated by any physical or mental disability that he
14 or she cannot currently engage in normal competitive employment
15 because of the disability.