

AMENDED IN SENATE MAY 21, 2009

AMENDED IN SENATE MAY 6, 2009

SENATE BILL

No. 755

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~~ *Sections 19152, 19403, and 19404 of, and to add Section 19404.1 to,* the Welfare and Institutions Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 755, as amended, 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 specified civil penalties for the first 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.

Existing law generally regulates community rehabilitation programs operated for the primary purpose of providing directly or facilitating the provision of vocational rehabilitation services to persons with disabilities.

This bill would revise the definition of a community rehabilitation program for purposes of these regulations to mean a certified, vendored, or accredited program, as defined.

Existing law authorizes any state agency, city or county, political subdivision, or district of the state to purchase materials and supplies manufactured and services provided by public or private nonprofit California corporations operating community rehabilitation programs serving persons with disabilities if these corporations meet specified requirements, including a requirement that contract work be performed by a workforce primarily comprised of persons with disabilities and a prohibition against directors of the corporation who are also employees of the corporation participating in or being present at discussions of the board of directors regarding labor-management contract negotiations.

This bill would require the workforce to be employees of the nonprofit corporation and would delete the above-described prohibition. It would also require the Department of General Services to designate a nonprofit corporation to coordinate purchases of materials and supplies manufactured and services between a state agency, city or county, political subdivision, or district of the state and these public or private nonprofit California corporations.

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

1 CHAPTER 15. PERSONS WITH DEVELOPMENTAL DISABILITIES
2 BUSINESS ENTERPRISE PARTICIPATION GOALS FOR STATE
3 CONTRACTS
4

5 8899.50. (a) This chapter shall be known, and may be cited,
6 as the Persons with Developmental Disabilities Business Enterprise
7 Program.

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

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

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

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

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

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

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

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

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

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

36 (3) Reduce pressure on the State Budget by encouraging persons
37 with developmental disabilities to earn wages, pay taxes, and
38 collect fewer state benefits.

39 (4) Have state agencies take all practical actions to meet or
40 exceed the persons with developmental disabilities business

1 enterprise participation goals of not less than 1 percent of the
2 number of contracts for goods or services awarded by state
3 agencies.

4 8899.51. As used in this chapter:

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

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

14 (c) "Commercially useful function" means a function performed
15 by a persons with developmental disabilities business enterprise
16 in which the persons with developmental disabilities business
17 enterprise does all of the following:

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

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

22 (3) Performs work that is normal for its business services and
23 functions.

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

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

32 (d) "Contractor" means any individual, firm, partnership, joint
33 venture, corporation, limited liability company, organization, or
34 other person or entity, or combination thereof, that submits a bid
35 and enters into a contract. A contractor includes a subcontractor
36 or a supplier that provides goods or services with respect to a
37 contract.

38 (e) "Developmental disability" means a disability, specified in
39 subdivision (a) of Section 4512 of the Welfare and Institutions
40 Code, rendering the affected person eligible to participate in

1 programs of rehabilitation, education, or social services conducted
2 by or on behalf of a public agency.

3 (f) “Goal” means a numerically expressed objective that
4 awarding departments and contractors are required to make efforts
5 to achieve.

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

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

11 (2) A business concern managed by, and the daily business
12 operations controlled by, one or more persons with a developmental
13 disability.

14 (3) A community-based nonprofit organization that employs
15 persons with a developmental disability that meets any of the
16 following conditions:

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

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

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

24 8899.52. Notwithstanding any other law, all contracts awarded
25 by an awarding department shall have statewide participation goals
26 of not less than 1 percent for persons with developmental
27 disabilities business enterprises. These goals apply to the total
28 number of contracts granted, let, or awarded each year by the
29 awarding department.

30 8899.53. In order to encourage the participation of persons
31 with developmental disabilities business enterprises in state
32 contracts for goods or services, each awarding department shall,
33 consistent with Section 14839, do all of the following:

34 (a) Advertise all upcoming opportunities to bid on competitively
35 bid contracts in the California State Contracts Register and include
36 in the advertisement an Internet link to information for prospective
37 bidders, including, but not limited to, general bidding procedures
38 and how to properly prepare a bid for those contracts.

39 (b) Provide information to persons with developmental
40 disabilities business enterprises regarding training and technical

1 assistance that is available to assist these persons with
2 developmental disabilities business enterprises in understanding
3 and bidding on contracts.

4 8899.54. (a) The Department of General Services shall adopt
5 regulations for the purpose of implementing this chapter. The
6 Department of General Services shall consult with the State
7 Department of Developmental Services with respect to the
8 implementation of this chapter and the adoption of these
9 regulations. Emergency regulations consistent with this section
10 may be adopted without review and approval by the Office of
11 Administrative Law if adopted within 90 days of the effective date
12 of this chapter.

13 (b) The regulations shall include the process and procedures for
14 certifying persons with developmental disabilities business
15 enterprises, consistent with and in coordination with the
16 certification process and procedures for small businesses and
17 disabled veteran business enterprises in Section 14839.

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

22 8899.55. In implementing this chapter, the awarding department
23 shall utilize existing resources such as the State Department of
24 Developmental Services.

25 8899.56. (a) A person or entity shall not:

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

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

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

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

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

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

14 (b) (1) A person or entity, participating as either a contractor,
15 subcontractor, or supplier, that violates any of the provisions of
16 subdivision (a) shall not bid on a state contract or project for a
17 period of not less than three years. An additional or subsequent
18 violation shall extend the periods of suspension for a period of not
19 less than five years. The suspension shall apply to the principals
20 of the business and any subsequent business formed or financed
21 by, or affiliated with, those principals.

22 (2) A person or entity that fails to satisfy the penalties, costs,
23 and attorney's fees imposed pursuant to subdivision (b) shall be
24 prohibited from further contracting with the state until those
25 amounts are paid.

26 (c) The awarding department shall report all alleged violations
27 of this section to the Attorney General who shall determine whether
28 to bring a civil action against any person or entity for violation of
29 this section. Civil penalties shall not be less than ten thousand
30 dollars (\$10,000) or more than thirty thousand dollars (\$30,000)
31 for the first violation, and not less than thirty thousand dollars
32 (\$30,000) or more than fifty thousand dollars (\$50,000) for each
33 additional subsequent violation.

34 (d) An awarding department shall not enter into any contract
35 with a contractor suspended for violating this section during the
36 period of the contractor's suspension. An awarding department
37 shall not award a contract to any contractor utilizing the services
38 of any person or entity suspended for violating this section during
39 the period of the suspension.

1 8899.57. (a) Each awarding department shall annually report
2 to the Department of General Services on the level of participation
3 by persons with developmental disabilities business enterprises in
4 contracts. The information reported shall include, but not be limited
5 to, the following:

6 (1) The percentage of contracts awarded to persons with
7 developmental disabilities business enterprises, including the
8 number of contracts awarded to each type of business enterprise
9 defined in paragraphs (1) to (3), inclusive, of subdivision (g) of
10 Section 8899.51.

11 (2) A description of each contract, including the number of
12 persons with developmental disabilities employed, the nature of
13 the work performed, the wages paid and other employee benefits
14 provided, and the work setting, including the extent to which the
15 work performed by persons with developmental disabilities was
16 in integrated work as defined in subdivision (o) of Section 4851
17 of the Welfare and Institutions Code.

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

21 (b) Beginning January 1, 2011, and on January 1 of each year
22 thereafter, the Department of General Services shall, in consultation
23 with the Department of Developmental Services, report to the
24 Governor and the Legislature, by department, on the level of
25 participation by persons with developmental disabilities business
26 enterprises under this chapter, including the information required
27 by subdivision (a).

28 8899.58. Notwithstanding any other provision of this chapter,
29 the failure of an awarding department to meet the goals established
30 under this chapter shall not affect the validity or enforceability of
31 any contract subject to this chapter.

32 8899.59. This chapter shall become inoperative on July 1, 2014,
33 and is repealed as of January 1, 2015.

34 SEC. 2. Section 14838.5 of the Government Code is amended
35 to read:

36 14838.5. (a) Notwithstanding the advertising, bidding, and
37 protest provisions of Chapter 6 (commencing with Section 14825)
38 of this code and Chapter 2 (commencing with Section 10290) and
39 Chapter 3 (commencing with Section 12100) of Part 2 of Division
40 2 of the Public Contract Code, a state agency may award a contract

1 for the acquisition of goods, services, or information technology
2 that has an estimated value of greater than five thousand dollars
3 (\$5,000), but less than one hundred thousand dollars (\$100,000),
4 to a certified small business, including a microbusiness, to a
5 persons with developmental disabilities business enterprise, or to
6 a disabled veteran business enterprise, as long as the agency obtains
7 price quotations from two or more certified small businesses,
8 including microbusinesses, from two or more persons with
9 developmental disabilities business enterprises, or from two or
10 more 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, from a persons with
14 developmental disabilities business enterprise, or from a disabled
15 veteran business enterprise.

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

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

25 SEC. 3. Section 14838.5 is added to the Government Code, to
26 read:

27 14838.5. (a) Notwithstanding the advertising, bidding, and
28 protest provisions of Chapter 6 (commencing with Section 14825)
29 of this code and Chapter 2 (commencing with Section 10290) and
30 Chapter 3 (commencing with Section 12100) of Part 2 of Division
31 2 of the Public Contract Code, a state agency may award a contract
32 for the acquisition of goods, services, or information technology
33 that has an estimated value of greater than five thousand dollars
34 (\$5,000), but less than one hundred thousand dollars (\$100,000),
35 to a certified small business, including a microbusiness, or to a
36 disabled veteran business enterprise, as long as the agency obtains
37 price quotations from two or more certified small businesses,
38 including microbusinesses, or from two or more disabled veteran
39 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 enterprises, and disabled veteran business enterprises, by conducting workshops on matters in connection with government procurement and contracting.

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

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

1 (f) Making recommendations to the department and other state
2 agencies for simplification of specifications and terms in order to
3 increase the opportunities for small business, microbusiness,
4 persons with developmental disabilities business enterprise, and
5 disabled veteran business enterprise participation.

6 (g) Developing, by regulation, other programs and practices
7 that are reasonably necessary to aid and protect the interest of small
8 businesses, microbusinesses, persons with developmental
9 disabilities business enterprises, and disabled veteran business
10 enterprises in contracting with the state.

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

16 (i) The information furnished by each contractor requesting a
17 small business or microbusiness preference shall be under penalty
18 of perjury.

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

21 SEC. 5. Section 14839 is added to the Government Code, to
22 read:

23 14839. There is hereby established within the department the
24 Office of Small Business and Disabled Veteran Business Enterprise
25 Services. The duties of the office shall include:

26 (a) Compiling and maintaining a comprehensive bidders list of
27 qualified small businesses and disabled veteran business
28 enterprises, and noting which small businesses also qualify as
29 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 microbusinesses, and disabled veteran business enterprises, by
36 conducting workshops on matters in connection with government
37 procurement and contracting.

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

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

(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, microbusiness, and disabled veteran business enterprise participation.

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

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

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

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

SEC. 6. Section 19152 of the Welfare and Institutions Code is amended to read:

19152. (a) “Community rehabilitation program” means a *certified, vendored, or accredited* program ~~which~~ *that* is operated for the primary purpose of providing directly or facilitating the provision of vocational rehabilitation services to persons with disabilities and ~~which~~ *that* provides singly or in combination one or more of the following services to enable persons with disabilities to maximize opportunities for employment, including career advancement:

(1) Comprehensive rehabilitation services ~~which~~ *that* shall include, under one management, medical, psychological, social, and vocational services.

(2) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(3) Recreational therapy.

(4) Physical and occupational therapy.

(5) Speech, language, and hearing therapy.

- (6) Psychiatric, psychological, and social services.
 - (7) Personal and work adjustment.
 - (8) Vocational training (in combination with other rehabilitation services).
 - (9) Evaluation or control of special disabilities.
 - (10) Assessment for determining eligibility and vocational needs, including evaluation for supported employment, development, and placement in jobs.
 - (11) Development of, and placement in, jobs.
 - (12) Job coaching services to enable a person with disabilities to obtain or maintain supported or competitive employment.
 - (13) Extended employment for persons with severe disabilities who cannot be readily absorbed into the competitive labor market.
 - (14) Personal assistance services.
 - (15) To the extent provided under federal law, services similar to the services described in paragraphs (1) to (13), inclusive.
 - (b) All medical and related health services shall be prescribed by, or under the formal supervision of, persons licensed to practice medicine or surgery in the state.
 - (c) *For purposes of this section, the following terms apply:*
 - (1) *“Certified program” means a program certified by the Department of Rehabilitation.*
 - (2) *“Vendored program” means a program vendored by a regional center pursuant to Section 4861 and the regulations adopted thereto.*
 - (3) *“Accredited program” means a program that has a determination of compliance described in Section 4851.*
- SEC. 7. Section 19403 of the Welfare and Institutions Code is amended to read:
19403. It is the intent of the Legislature to encourage state organizations, cities, counties, districts, and other political subdivisions to purchase products manufactured by and services provided by public or private nonprofit California corporations operating ~~workshops~~ *community rehabilitation programs* serving individuals with disabilities whenever it is feasible to do so and the proximity of the public or private nonprofit California corporations operating ~~workshops~~ *community rehabilitation programs* serving individuals with disabilities makes the purchases reasonably convenient and to provide equality of competitive advantage for organizations operating ~~workshops~~ *community*

1 *rehabilitation programs* for individuals with disabilities and
2 organizations operating ~~workshops~~ *community rehabilitation*
3 *programs* for individuals who are blind.

4 ~~SEC. 6.~~

5 *SEC. 8.* Section 19404 of the Welfare and Institutions Code is
6 amended to read:

7 19404. Any state agency, city or county, political subdivision,
8 or district of this state may, without advertising or calling for bids,
9 purchase materials and supplies manufactured and services
10 provided by public or private nonprofit California corporations
11 operating community rehabilitation programs serving persons with
12 disabilities who have indicated an interest in supplying those goods
13 and services and may, on an equitable basis apportion the business
14 among the interested community rehabilitation programs, provided
15 the goods or services meet the specifications and needs of the
16 purchasing agency and are purchased at a fair market price, as
17 determined by the appropriate state or local agency, and provided
18 that the public or private nonprofit California corporations comply
19 with all of the following requirements:

20 (a) (1) Contract work obtained under this section shall be
21 performed *directly* by a labor force which is comprised primarily
22 of persons with disabilities, as measured by the percentage of
23 ~~person-hours of direct labor~~ *direct labor hours* devoted to the
24 contract work. *The entire labor force that performs the contract*
25 *shall be employees of the public or private nonprofit California*
26 *corporation that has the contract with the state agency, city or*
27 *county, political subdivision, or district of this state. This public*
28 *or private nonprofit California corporation shall not subcontract*
29 *the performance of the contract unless this is disclosed in the*
30 *corporation's proposal. Subcontracted direct labor hours shall*
31 *be included in the calculation of direct labor hours performed*
32 *primarily of persons with disabilities.*

33 (2) For purposes of this subdivision, "primarily" means 75
34 percent or greater.

35 (3) Agree to make those elections permitted of any nonprofit
36 corporation under the federal Insurance Contributions Act and the
37 California Unemployment Insurance Code in order to provide
38 social security and unemployment and disability benefits for its
39 employees commencing with its first contract or purchase order
40 under this section and continuing thereafter. In the event that the

1 nonprofit corporation ceases to provide those benefits, any existing
2 contract or purchase order under this section with the corporation
3 is terminated and no further contracts or purchase orders shall be
4 awarded to that corporation for the period of two years after the
5 corporation ceases to provide the benefits. For the purposes of this
6 subdivision, a person with a disability shall be considered an
7 employee when ~~performing productive work~~ *providing direct labor*
8 *hours*.

9 (4) Provide in its articles of incorporation that at least two of
10 the directors of its board of directors shall be comprised of persons
11 with disabilities or the parents, guardians, or conservators of
12 ~~individuals with disabilities. Directors who are also employees of~~
13 ~~the nonprofit corporation shall not participate in or be present at~~
14 ~~discussions of the board of directors concerned with~~
15 ~~labor-management contract negotiations.~~ *individuals with*
16 *disabilities*

17 (5) Provide for disabled employees of the nonprofit corporation
18 benefits and other employer-employee agreements substantially
19 equal to those benefits and agreements entered into between each
20 nonprofit corporation and the representatives designated by a
21 majority of the employees.

22 (6) Not commit any unfair labor practices as defined in Section
23 8(a) of the National Labor Relations Act.

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

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

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

35 *SEC. 9. Section 19404.1 is added to the Welfare and Institutions*
36 *Code, to read:*

37 *19404.1. The Department of General Services shall designate*
38 *a nonprofit corporation to coordinate purchases of materials and*
39 *supplies manufactured and services pursuant to Section 19404*
40 *between a state agency, city or county, political subdivision, or*

1 district of the state and the public or private nonprofit California
2 corporations operating community rehabilitation programs serving
3 persons with disabilities. The nonprofit corporation that
4 coordinates these purchases shall not be organized or operated
5 for the benefit of private interests, such as the creator or the
6 creator's family, shareholders of the organization, other designated
7 individuals, or persons controlled directly or indirectly by these
8 private interests. No part of the net earnings of this nonprofit
9 corporation may inure to the benefit of any private shareholder
10 or individual. For purposes of this section, private shareholder or
11 individual is a person having a personal and private interest in
12 the activities of the organization. In addition, any funds received
13 by the coordinating nonprofit corporation pursuant to a contract
14 with a community rehabilitation program shall support community
15 rehabilitation programs and persons with disabilities. The
16 coordinating nonprofit corporation shall provide an annual report
17 to the department.

O