

AMENDED IN ASSEMBLY AUGUST 20, 2012

AMENDED IN ASSEMBLY AUGUST 7, 2012

AMENDED IN ASSEMBLY JUNE 12, 2012

AMENDED IN SENATE MAY 2, 2012

AMENDED IN SENATE MARCH 27, 2012

SENATE BILL

No. 1510

Introduced by Senator Wright
(Coauthor: Assembly Member Perea)

February 24, 2012

An act to amend Section 14837 of the Government Code, and to amend Section 999 of the Military and Veterans Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1510, as amended, Wright. Contracts.

(1) The Small Business Procurement and Contract Act requires the Director of General Services and the heads of other state agencies that enter into contracts for the provision of goods, services, and information technology and for the construction of state facilities to establish goals for the participation of small businesses in these contracts, to provide for a small business preference in the award of these contracts, to give special consideration and special assistance to small businesses, and, whenever possible, to make awards to small businesses, as specified. The act authorizes the director to set standards, established by regulation, for a certified small business or microbusiness to contribute to the fulfillment of contract requirements by performing a commercially useful function, as defined.

This bill would modify the definition to include additional conditions under which a certified small business or microbusiness is deemed to perform a commercially useful function.

(2) The California Disabled Veteran Business Enterprise Program addresses the special needs of disabled veterans by assisting state procurement authorities in meeting or exceeding the disabled veteran enterprise participation goal of 3% for procurement contracts. The program defines terms for its purposes, including, but not limited to, the term “commercially useful function.”

This bill would modify the definition to include additional conditions, as specified.

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 14837 of the Government Code is
2 amended to read:

3 14837. As used in this chapter:

4 (a) “Department” means the Department of General Services.

5 (b) “Director” means the Director of General Services.

6 (c) “Manufacturer” means a business that meets both of the
7 following requirements:

8 (1) It is primarily engaged in the chemical or mechanical
9 transformation of raw materials or processed substances into new
10 products.

11 (2) It is classified between Codes 31 to 33, inclusive, of the
12 North American Industry Classification System.

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

21 (2) “Microbusiness” is a small business which, together with
22 affiliates, has average annual gross receipts of two million five
23 hundred thousand dollars (\$2,500,000) or less over the previous

1 three years, or is a manufacturer, as defined in subdivision (c),
2 with 25 or fewer employees.

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

11 (4) Standards applied under this subdivision shall be established
12 by regulation, in accordance with Chapter 3.5 (commencing with
13 Section 11340) of Part 1 of Division 3 of Title 2, and shall preclude
14 the qualification of businesses that are dominant in their industry.
15 In addition, the standards shall provide that the certified small
16 business or microbusiness shall provide goods or services that
17 contribute to the fulfillment of the contract requirements by
18 performing a commercially useful function, as defined below:

19 (A) A certified small business or microbusiness is deemed to
20 perform a commercially useful function if the business does all of
21 the following:

22 (i) Is responsible for the execution of a distinct element of the
23 work of the contract.

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

26 (iii) Performs work that is normal for its business services and
27 functions.

28 (iv) Is responsible, with respect to products, inventories,
29 materials, and supplies required for the contract, for negotiating
30 price, determining quality and quantity, ordering, installing, if
31 applicable, and making payment.

32 ~~(v) Is responsible for its own accounts receivable, and the~~
33 ~~accounts receivable of the certified small business or microbusiness~~
34 ~~are not directly or indirectly controlled by the prime contractor,~~
35 ~~supplier, or wholesaler.~~

36 ~~(vi)~~

37 (v) Is not further subcontracting a portion of the work that is
38 greater than that expected to be subcontracted by normal industry
39 practices.

1 (B) A contractor, subcontractor, or supplier will not be
2 considered to perform a commercially useful function if the
3 contractor's, subcontractor's, or supplier's role is limited to that
4 of an extra participant in a transaction, contract, or project through
5 which funds are passed in order to obtain the appearance of small
6 business or microbusiness participation.

7 (e) "Disabled veteran business enterprise" means an enterprise
8 that has been certified as meeting the qualifications established by
9 subdivision (g) of Section 999 of the Military and Veterans Code.

10 SEC. 2. Section 999 of the Military and Veterans Code is
11 amended to read:

12 999. (a) This article shall be known as, and may be cited as,
13 the California Disabled Veteran Business Enterprise Program. The
14 California Disabled Veteran Business Enterprise Program is
15 established to address the special needs of disabled veterans
16 seeking rehabilitation and training through entrepreneurship and
17 to recognize the sacrifices of Californians disabled during military
18 service. It is the intent of the Legislature that every state
19 procurement authority honor California's disabled veterans by
20 taking all practical actions necessary to meet or exceed the disabled
21 veteran business enterprise participation goal of a minimum of 3
22 percent of total contract value.

23 (b) As used in this article, the following definitions apply:

24 (1) "Administering agency" means the Treasurer in the case of
25 contracts for professional bond services, and the Department of
26 General Services' Office of Small Business and Disabled Veteran
27 Business Enterprise Services, in the case of contracts governed by
28 Section 999.2.

29 (2) "Awarding department" means a state agency, department,
30 governmental entity, or other officer or entity empowered by law
31 to issue bonds or enter into contracts on behalf of the state.

32 (3) "Bonds" means bonds, notes, warrants, certificates of
33 participation, and other evidences of indebtedness issued by, or
34 on behalf of, the state.

35 (4) "Contract" includes any agreement or joint agreement to
36 provide professional bond services to the State of California or an
37 awarding department. "Contract" also includes any agreement or
38 joint development agreement to provide labor, services, materials,
39 supplies, or equipment in the performance of a contract, franchise,

1 concession, or lease granted, let, or awarded for, and on behalf of,
2 the state.

3 (5) (A) “Contractor” means any person or persons, regardless
4 of race, color, creed, national origin, ancestry, sex, marital status,
5 disability, religious or political affiliation, age, or any sole
6 proprietorship, firm, partnership, joint venture, corporation, or
7 combination thereof that submits a bid and enters into a contract
8 with a representative of a state agency, department, governmental
9 entity, or other officer empowered by law to enter into contracts
10 on behalf of the state. “Contractor” includes any provider of
11 professional bond services who enters into a contract with an
12 awarding department.

13 (B) “Disabled veteran business enterprise contractor,
14 subcontractor, or supplier” means any person or entity that has
15 been certified by the administering agency pursuant to this article
16 and that performs a “commercially useful function,” as defined
17 below, in providing services or goods that contribute to the
18 fulfillment of the contract requirements:

19 (i) A person or an entity is deemed to perform a “commercially
20 useful function” if a person or entity does all of the following:

21 (I) ~~(aa)~~—Is responsible for the execution of a distinct element of
22 the work of the contract.

23 ~~(ab)~~

24 (II) Carries out the obligation by actually performing, managing,
25 or supervising the work involved.

26 ~~(ac)~~

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

29 ~~(ad)~~

30 (IV) Is responsible, with respect to products, inventories,
31 materials, and supplies required for the contract, for negotiating
32 price, determining quality and quantity, ordering, installing, if
33 applicable, and making payment.

34 ~~(ae) Is responsible for its own accounts receivable, and the~~
35 ~~accounts receivable of the certified small business or microbusiness~~
36 ~~are not directly or indirectly controlled by the prime contractor,~~
37 ~~supplier, or wholesaler.~~

38 ~~(H)~~

1 (V) Is not further subcontracting a portion of the work that is
2 greater than that expected to be subcontracted by normal industry
3 practices.

4 (ii) A contractor, subcontractor, or supplier will not be
5 considered to perform a “commercially useful function” if the
6 contractor’s, subcontractor’s, or supplier’s role is limited to that
7 of an extra participant in a transaction, contract, or project through
8 which funds are passed in order to obtain the appearance of a
9 disabled veteran business enterprise participation.

10 (6) “Disabled veteran” means a veteran of the military, naval,
11 or air service of the United States, including, but not limited to,
12 the Philippine Commonwealth Army, the Regular Scouts, “Old
13 Scouts,” and the Special Philippine Scouts, “New Scouts,” who
14 has at least a 10-percent service-connected disability and who is
15 domiciled in the state.

16 (7) (A) “Disabled veteran business enterprise” means a business
17 certified by the administering agency as meeting all of the
18 following requirements:

19 (i) It is a sole proprietorship at least 51 percent owned by one
20 or more disabled veterans or, in the case of a publicly owned
21 business, at least 51 percent of its stock is unconditionally owned
22 by one or more disabled veterans; a subsidiary that is wholly owned
23 by a parent corporation, but only if at least 51 percent of the voting
24 stock of the parent corporation is unconditionally owned by one
25 or more disabled veterans; or a joint venture in which at least 51
26 percent of the joint venture’s management, control, and earnings
27 are held by one or more disabled veterans.

28 (ii) The management and control of the daily business operations
29 are by one or more disabled veterans. The disabled veterans who
30 exercise management and control are not required to be the same
31 disabled veterans as the owners of the business.

32 (iii) It is a sole proprietorship, corporation, or partnership with
33 its home office located in the United States, which is not a branch
34 or subsidiary of a foreign corporation, foreign firm, or other
35 foreign-based business.

36 (B) Notwithstanding subparagraph (A), after the death or the
37 certification of a permanent medical disability of a disabled veteran
38 who is a majority owner of a business that qualified as a disabled
39 veteran business enterprise prior to that death or certification of a
40 permanent medical disability, and solely for purposes of any

1 contract entered into before that death or certification, that business
2 shall be deemed to be a disabled veteran business enterprise for a
3 period not to exceed three years after the date of that death or
4 certification of a permanent medical disability, if the business is
5 inherited or controlled by the spouse or child of that majority
6 owner, or by both of those persons.

7 (8) “Foreign corporation,” “foreign firm,” or “foreign-based
8 business” means a business entity that is incorporated or has its
9 principal headquarters located outside the United States of
10 America.

11 (9) “Goal” means a numerically expressed objective that
12 awarding departments and contractors are required to make efforts
13 to achieve.

14 (10) “Management and control” means effective and
15 demonstrable management of the business entity.

16 (11) “Professional bond services” include services as financial
17 advisers, bond counsel, underwriters in negotiated transactions,
18 underwriter’s counsel, financial printers, feasibility consultants,
19 and other professional services related to the issuance and sale of
20 bonds.