

AMENDED IN ASSEMBLY MAY 4, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1125**

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**Introduced by Assembly Member Weber**  
**(Coauthor: Assembly Member Brown)**

February 27, 2015

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An act to amend ~~Section~~ *Sections 4535.2 and 14838* of the Government Code, *and to amend Section 42893 of the Public Resources Code*, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1125, as amended, Weber. State agency contracts: small business.

Existing law, the Small Business Procurement and Contract Act, provides for various programs to encourage the participation of small businesses, as certified by the Department of General Services, in state agency contracts, including a microbusiness and a disabled veteran business enterprise. Existing law requires directors of state agencies, in awarding prescribed contracts, to provide a 5% preference to small businesses and microbusinesses, and a preference of up to 5% to a nonsmall business that provides for small business or microbusiness subcontractor participation, not to exceed prescribed amounts. Existing law provides, in solicitations where an award is made to the lowest responsible bidder, that the preferences shall not exceed \$50,000 for any bid and that the combined cost of preferences granted shall not exceed \$100,000. Existing law provides that, in bids in which the state has reserved the right to make multiple awards, the \$50,000 maximum preference cost shall be applied.

This bill would provide, in solicitations where an award is made to the lowest responsible bidder, that the preference to small business and

microbusiness be 5% of the lowest responsible nonsmall business bidder meeting specifications and that the preference to nonsmall business bidders that provide for small business or microbusiness subcontractor participation be up to a maximum of 5% of the lowest responsible nonsmall business bidder. This bill also would provide that the preference not exceed \$100,000 for any contract award and that the combined cost of preferences granted not exceed \$150,000. This bill would require that the \$100,000 maximum preference cost be applied in multiple contract awards.

*Existing law, the Target Area Contract Preference Act, requires, if the contract is for goods or services in excess of \$100,000, except as specified, the state to award preferences to California-based companies submitting bids or proposals for state contracts who demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least a specified percentage of the hours will be accomplished at an identified worksite or worksites located in a distressed area by persons with a high risk of unemployment. Existing law also provides that the maximum preference and incentive a bidder may be awarded pursuant to this act is \$50,000 for any bid, and \$100,000 for the combined cost of these preferences and incentives and those provided pursuant to any other provision of law.*

*This bill would instead provide, if the bid includes preferences or incentives provided under the Target Area Contract Preference Act and the Small Business Procurement and Contract Act, that the maximum preference and incentive a bidder may be awarded pursuant to these provisions shall not exceed \$150,000 for the combined cost of these preferences and incentives and those provided pursuant to any other provision of law.*

*Existing law, the California Tire Recycling Act, provides, on state purchases of products that are made of, or contains components that can be derived from the recycling of used tires, to suppliers of recycled tire products, a bid preference of 5% of the lowest bid or price quoted by suppliers offering similar products made from nonrecycled components. That law limits the preference to \$100,000 each year, or \$50,000 if the preference exceeding that amount would preclude an award to a small business that offers a similar product made of nonrecycled tire components and is qualified in accordance with the Small Business Procurement and Contract Act.*

*This bill would provide, notwithstanding those limitations, if the bid includes the preference authorized in the California Tire Recycling Act and the Small Business Procurement and Contract Act, the combined cost of preferences and incentives granted pursuant to California Tire Recycling Act and any other law is not to exceed \$150,000.*

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 4535.2 of the Government Code is  
2 amended to read:

3 4535.2. (a) (1) The maximum preference and incentive a  
4 bidder may be awarded pursuant to this chapter and any other  
5 provision of law shall be 15 percent. However, in no case shall the  
6 maximum preference and incentive cost under this chapter exceed  
7 fifty thousand dollars (\$50,000) for any bid, nor shall the combined  
8 cost of preferences and incentives granted pursuant to this chapter  
9 and any other provision of law exceed one hundred thousand  
10 dollars(\$100,000). In those cases where the 15-percent cumulated  
11 preference and incentive cost would exceed the one hundred  
12 thousand dollar (\$100,000) maximum preference and incentive  
13 cost limit, the one hundred thousand dollar (\$100,000) maximum  
14 preference and incentive cost limit shall apply.

15 (2) *Notwithstanding the one-hundred-thousand-dollar*  
16 *(\$100,000) limitation specified in paragraph (1), if the bid includes*  
17 *preferences or incentives under this chapter and Section 14838,*  
18 *the combined cost of preferences and incentives granted pursuant*  
19 *to this chapter and any other law shall not exceed one hundred*  
20 *fifty thousand dollars (\$150,000).*

21 (b) Notwithstanding the provisions of this chapter, small  
22 business bidders qualified in accordance with Section 14838 shall  
23 have precedence over nonsmall business bidders in that the  
24 application of any bidder preference for which nonsmall business  
25 bidders may be eligible, including the preference contained in this  
26 chapter, shall not result in the denial of the award to a small  
27 business bidder. This subdivision shall apply to those cases where  
28 the small business bidder is the lowest responsible bidder, as well  
29 as to those cases where the small business bidder is eligible for

1 award as the result of application of the 5-percent small business  
2 bidder preference and incentive.

3 ~~SECTION 1.~~

4 *SEC. 2.* Section 14838 of the Government Code is amended  
5 to read:

6 14838. In order to facilitate the participation of small business,  
7 including microbusiness, in the provision of goods, information  
8 technology, and services to the state, and in the construction  
9 (including alteration, demolition, repair, or improvement) of state  
10 facilities, the directors of the department and other state agencies  
11 that enter those contracts, each within their respective areas of  
12 responsibility, shall do all of the following:

13 (a) Establish goals, consistent with those established by the  
14 Office of Small Business Certification and Resources, for the extent  
15 of participation of small businesses, including microbusinesses,  
16 in the provision of goods, information technology, and services to  
17 the state, and in the construction of state facilities.

18 (b) Provide for small business preference, or nonsmall business  
19 preference for bidders that provide for small business and  
20 microbusiness subcontractor participation, in the award of contracts  
21 for goods, information technology, services, and construction, as  
22 follows:

23 (1) In solicitations where an award is to be made to the lowest  
24 responsible bidder meeting specifications, the preference to small  
25 business and microbusiness shall be 5 percent of the lowest  
26 responsible nonsmall business bidder meeting specifications. The  
27 preference to nonsmall business bidders that provide for small  
28 business or microbusiness subcontractor participation shall be, up  
29 to a maximum of 5 percent of the lowest responsible nonsmall  
30 business bidder meeting specifications, determined according to  
31 rules and regulations established by the Department of General  
32 Services.

33 (2) In solicitations where an award is to be made to the highest  
34 scored bidder based on evaluation factors in addition to price, the  
35 preference to small business or microbusiness shall be 5 percent  
36 of the highest responsible bidder's total score. The preference to  
37 nonsmall business bidders that provide for small business or  
38 microbusiness subcontractor participation shall be up to a  
39 maximum 5 percent of the highest responsible bidder's total score,

1 determined according to rules and regulations established by the  
2 Department of General Services.

3 (3) The preferences under paragraphs (1) and (2) shall not be  
4 awarded to a noncompliant bidder and shall not be used to achieve  
5 any applicable minimum requirements.

6 (4) The preference under paragraph (1) shall not exceed one  
7 hundred thousand dollars (\$100,000) for any contract award, and  
8 the combined cost of preferences granted pursuant to paragraph  
9 (1) and any other provision of law shall not exceed one hundred  
10 fifty thousand dollars (\$150,000). For contract awards in which  
11 the state has reserved the right to make multiple awards, this one  
12 hundred thousand dollar (\$100,000) maximum preference cost  
13 shall be applied, to the extent possible, so as to maximize the dollar  
14 participation of small businesses, including microbusinesses, in  
15 the contract award.

16 (c) Give special consideration to small businesses and  
17 microbusinesses by both:

18 (1) Reducing the experience required.

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

20 (d) Give special assistance to small businesses and  
21 microbusinesses in the preparation and submission of the  
22 information requested in Section 14310.

23 (e) Under the authorization granted in Section 10163 of the  
24 Public Contract Code, make awards, whenever feasible, to small  
25 business and microbusiness bidders for each project bid upon  
26 within their prequalification rating. This may be accomplished by  
27 dividing major projects into subprojects so as to allow a small  
28 business or microbusiness contractor to qualify to bid on these  
29 subprojects.

30 (f) Small business and microbusiness bidders qualified in  
31 accordance with this chapter shall have precedence over nonsmall  
32 business bidders in that the application of a bidder preference for  
33 which nonsmall business bidders may be eligible under this section  
34 or any other provision of law shall not result in the denial of the  
35 award to a small business or microbusiness bidder. In the event of  
36 a precise tie between the low responsible bid of a bidder meeting  
37 specifications of a small business or microbusiness, and the low  
38 responsible bid of a bidder meeting the specifications of a disabled  
39 veteran-owned small business or microbusiness, the contract shall  
40 be awarded to the disabled veteran-owned small business or

1 microbusiness. This provision applies if the small business or  
2 microbusiness bidder is the lowest responsible bidder, as well as  
3 if the small business or microbusiness bidder is eligible for award  
4 as the result of application of the small business and microbusiness  
5 bidder preference granted by subdivision (b).

6 *SEC. 3. Section 42893 of the Public Resources Code is*  
7 *amended to read:*

8 42893. (a) The combined amount of preference granted  
9 pursuant to this ~~section~~ *article* shall not exceed one hundred  
10 thousand dollars (\$100,000) each year.

11 (b) Notwithstanding Section 42892, the recycled tire product  
12 preference shall not exceed fifty thousand dollars (\$50,000) if a  
13 preference exceeding that amount would preclude an award to a  
14 small business that offers a similar product made of nonrecycled  
15 tire components and is qualified in accordance with Section 14838  
16 of the Government Code. This provision applies regardless of  
17 whether the small business is the lowest responsible bidder or is  
18 eligible for the contract award on the basis of application of the 5  
19 percent small business preference.

20 (c) *Notwithstanding the one-hundred-thousand-dollar limitation*  
21 *specified in subdivision (a) or the fifty-thousand-dollar (\$50,000)*  
22 *limitation specified in subdivision (b), if the bid includes the*  
23 *preference authorized in Section 42891 and Section 14838 of the*  
24 *Government Code, the combined cost of preferences and incentives*  
25 *granted pursuant to this article and any other law shall not exceed*  
26 *one hundred fifty thousand dollars (\$150,000).*