

AMENDED IN ASSEMBLY APRIL 6, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2270**

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**Introduced by Assembly Member Bonta**

February 18, 2016

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An act to ~~add Article 3 (commencing with Section 14848) to Chapter 6.5 of Part 5.5 of Division 3 of Title 2 of the Government Code, and to amend Section 10221 of the Public Contract Code, relating to public contracts; amend Sections 63089.95 and 63089.96 of the Government Code, relating to state government, and making an appropriation therefor.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2270, as amended, Bonta. ~~Public contracts; business development; statewide bonding program. California Infrastructure and Economic Development Bank: surety bond program.~~

*Under the Small Business Financial Assistance Act of 2013, the California Infrastructure and Economic Development Bank, within the Governor's Office of Business and Economic Development, administers specific programs relating to small business, either administered directly by the bank or under contract with small business financial development corporations. The act authorizes bank programs to offer surety bond guarantees. The act prohibits a corporation from guaranteeing any loan unless and until it makes specified determinations, including that there is a low probability that the surety bond would be granted by a financial institution or financial company under reasonable terms or conditions, and the beneficiary has demonstrated a reasonable prospect of successful completion of the project.*

*This bill would modify that prohibition to refer to a surety bond instead of a loan and would add private bonding companies to those entities considered when calculating the probability that a surety bond would be granted.*

*The act, in addition to the authority described above, authorizes a corporation to act as a guarantor on a surety bond for any small business contractor, including, but not limited to, women, minority, and disabled veteran contractors.*

*This bill would expand those entities for which a corporation may act as a guarantor on a surety bond to include disadvantaged business enterprise contractors. The bill would require a surety bond program to include technical assistance to a participating contractor, as prescribed. The bill would authorize the bank, in implementing a surety bond program under the act, to assign all or part of the program to another state entity in a prescribed manner, to establish one or more pilot projects before approving directives and guidelines for a statewide surety bond and small contractor assistance program, and to establish one or more nonstate contracts under specific circumstances.*

*The act continues in existence the California Small Business Expansion Fund (expansion fund), a continuously appropriated fund that includes General Fund moneys. The expansion fund may be used to pay defaulted loan guarantee or surety bond losses, or other financial product defaults or losses, to fund direct loans and other debt instruments, to pay administrative costs of corporations, to pay state support and administrative costs, and to pay costs to protect a real property interest in a financial product default.*

*By expanding the activities of the bank that are funded by continuous appropriation from the expansion fund, this bill would make an appropriation.*

~~Existing law requires that public contracts with state agencies provide for the filing of separate performance and payment bonds by the contractor in the form of bonds executed by an admitted surety insurer, as provided:~~

~~This bill would establish, in the Department of General Services, a statewide contractor bonding program, to be administered by the Office of Small Business and Disabled Veteran Business Enterprise Services, for the purpose of enabling participating contractors to meet any applicable bid, payment, or performance bonding requirements for public contracts with state agencies. This bill would authorize the office to act as guarantor on surety bonds for participating contractors on~~

~~contracts with state agencies and require the office to provide specified technical assistance to participating contractors. The bill would authorize the office to charge participating contractors fees for the provision of these services, not to exceed the amount necessary to cover the costs incurred in the administration of these provisions.~~

~~This bill would require the office to establish a request for the proposals process by which contractors may participate in the program as a participating contractor and to give preference to contractors that are disadvantaged business enterprises, small business enterprises, or disabled veteran business enterprises, as specified. The bill would authorize the office to terminate a contractor's participation after a reasonable period of time if the contractor is no longer in compliance with the requirements of the program or suspend a participating contractor that defaults on a bond from transacting any business with the state for a period of not less than 3 years and not more than 10 years.~~

~~Vote: majority 2/3. Appropriation: no-yes. Fiscal committee: yes. State-mandated local program: no.~~

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

1     SECTION 1. Section 63089.95 of the Government Code is  
2     amended to read:

3     63089.95. In furtherance of the purposes set forth in Section  
4     63088.1 of this code and Section 14001 of the Corporations Code,  
5     a corporation may do any one or more of the following activities,  
6     but only to the extent that the activities are authorized pursuant to  
7     the contract between the bank and corporation: guarantee, endorse,  
8     or act as surety on the bonds, notes, contracts, or other obligations  
9     of, or assist financially, any person, firm, corporation, or  
10    association, and may establish and regulate the terms and  
11    conditions with respect to any such guarantees or financial  
12    assistance and the charges for interest and service connected  
13    therewith, except that the corporation shall not ~~make or~~ guarantee  
14    any ~~loan~~, surety bond unless and until it determines:

15    (a) There is a low probability that the surety bond would be  
16    granted by a *private bonding company*, ~~financial institution~~  
17    *institution*, or financial company under reasonable terms or  
18    conditions, and the beneficiary has demonstrated a reasonable  
19    prospect of successful completion of the project.

1 (b) The surety bond project coverage will be used exclusively  
 2 in this state.

3 (c) The beneficiary has a minimum equity interest in the business  
 4 as determined by the directives and requirements.

5 (d) As a result of the surety bond, the jobs generated or retained  
 6 demonstrate reasonable conformance to the directives and  
 7 requirements specifying employment criteria.

8 *SEC. 2. Section 63089.96 of the Government Code is amended*  
 9 *to read:*

10 63089.96. (a) In addition to the authority granted by Section  
 11 63089.95, pursuant to the directives and requirements a corporation  
 12 may act as guarantor on a surety bond for any small business  
 13 contractor, including, but not limited to, women, minority, ~~and~~  
 14 ~~disabled veteran~~ *disabled veteran, and disadvantaged business*  
 15 *enterprise contractors.*

16 (b) The provisions of subdivision (a) allowing a corporation to  
 17 act as a guarantor on surety bonds may be funded through  
 18 appropriate state or federal funding sources. Federal funds shall  
 19 be deposited in the Federal Trust Fund in the State Treasury in  
 20 accordance with Section 16360, for transfer to the expansion fund.

21 (c) *The surety bond program shall include technical assistance*  
 22 *to a participating contractor. Technical assistance provided*  
 23 *pursuant to this section shall include, but is not limited to, all of*  
 24 *the following:*

25 (1) *Assessment and identification of the particular barriers*  
 26 *facing the participating contractor and development of solutions*  
 27 *to those barriers. Activities pursuant to this paragraph may include*  
 28 *the following:*

- 29 (A) *Assessments by surety and construction experts.*
- 30 (B) *Development of a business plan.*
- 31 (C) *Workshops addressing contractor bonding, bidding on state*  
 32 *projects, job safety, and other topics that would be beneficial to*  
 33 *the participating contractor.*
- 34 (D) *Project field support.*

35 (2) *Identification of, and assistance in obtaining, other financial*  
 36 *support and resources. Activities pursuant to this paragraph may*  
 37 *include the following:*

- 38 (A) *Linkages with accountants, brokers, and surety companies*  
 39 *committed to helping contractors build bonding and organizational*  
 40 *capacity.*

- 1 (B) *Prequalifications for additional assistance.*
- 2 (C) *Collateral guarantees.*
- 3 (d) *In implementing a surety bond program pursuant to this*
- 4 *chapter, the bank may:*
- 5 (1) *Assign all or part of the program to another state entity that*
- 6 *agrees to implement the program consistent with this chapter and*
- 7 *directives and requirements adopted by the bank. If the bank*
- 8 *assigns all or a part of the program to another state entity, the*
- 9 *bank shall retain responsibility for reporting on the use and*
- 10 *outcomes of the program, pursuant to Section 63089.98.*
- 11 (2) *Establish one or more pilot projects before approving*
- 12 *directives and guidelines for a statewide surety bond and small*
- 13 *contractor assistance program.*
- 14 (3) *Establish one or more nonstate contracts, to the extent*
- 15 *deemed necessary by the bank, based on there being an insufficient*
- 16 *number of corporations interested in, and qualified to, implement*
- 17 *a surety bond program, including the technical assistance required*
- 18 *in subdivision (c). These contractors shall be subject to the*
- 19 *applicable reporting requirements of this chapter, Section*
- 20 *63089.97, and any other directive or requirement set by the bank.*

21 ~~SECTION 1. Article 3 (commencing with Section 14848) is~~  
 22 ~~added to Chapter 6.5 of Part 5.5 of Division 3 of Title 2 of the~~  
 23 ~~Government Code, to read:~~

24  
 25 ~~Article 3. Statewide Contractor Bonding Program~~

26  
 27 ~~14848. As used in this article, the following definitions shall~~  
 28 ~~apply:~~

- 29 (a) ~~“Office” means the Office of Small Business and Disabled~~  
 30 ~~Veteran Business Enterprise Services established within the~~  
 31 ~~department pursuant to Section 14839.~~
- 32 (b) ~~“Program” means the statewide contractor bonding program~~  
 33 ~~established pursuant to this chapter.~~
- 34 (c) ~~“Participating contractor” means a person seeking to bid on~~  
 35 ~~a contract with a state agency that is required by law, including,~~  
 36 ~~but not limited to, Sections 10221 to 10225, inclusive, of the Public~~  
 37 ~~Contract Code, to acquire bonds to participate in those contracts~~  
 38 ~~and participate in the program.~~
- 39 ~~14848.10. There is in the department a statewide contractor~~  
 40 ~~bonding program for the purpose of enabling participating~~

1 contractors to meet any applicable bid, payment, or performance  
 2 bonding requirements for public contracts with state agencies. The  
 3 office shall be the entity to administer this program.

4 ~~14848.20. The office may act as guarantor on a surety bond~~  
 5 ~~for a participating contractor on a contract with a state agency.~~

6 ~~14848.30. (a) The office shall establish a request for proposals~~  
 7 ~~process by which contractors may participate in the program as~~  
 8 ~~participating contractors pursuant to this chapter.~~

9 ~~(b) In considering requests for proposals for assistance pursuant~~  
 10 ~~to this article, the department shall give preference to contractors~~  
 11 ~~that are any of the following:~~

12 ~~(1) A disadvantaged business enterprise, as defined in Section~~  
 13 ~~2051 of the Public Contract Code.~~

14 ~~(2) A small business enterprise certified pursuant to Article 1~~  
 15 ~~(commencing with Section 14835).~~

16 ~~(3) A disabled veteran business enterprise, as defined in Section~~  
 17 ~~999 of the Military and Veterans Code.~~

18 ~~(e) (1) The office may terminate a contractor's participation in~~  
 19 ~~the program after a reasonable period of time if the contractor is~~  
 20 ~~no longer in compliance with the requirements of the program.~~

21 ~~(2) The office may suspend a participating contractor that~~  
 22 ~~defaults on a bond issued pursuant to this article from transacting~~  
 23 ~~any business with the state either directly as a prime contractor or~~  
 24 ~~indirectly as a subcontractor, for a period of not less than three~~  
 25 ~~years and not more than 10 years. A contractor that was previously~~  
 26 ~~a participating contractor but was suspended pursuant to this~~  
 27 ~~paragraph may resume participation in the bonding program at the~~  
 28 ~~end of his or her suspension upon approval by the office.~~

29 ~~14848.40. The office shall provide technical assistance to a~~  
 30 ~~participating contractor. Technical assistance provided pursuant~~  
 31 ~~to this section shall include, but is not limited to, all of the~~  
 32 ~~following:~~

33 ~~(a) Assessment and identification of the particular barriers facing~~  
 34 ~~the participating contractor and development of solutions to those~~  
 35 ~~barriers. Activities pursuant to this subdivision may include the~~  
 36 ~~following:~~

37 ~~(1) Assessments by surety and construction experts.~~

38 ~~(2) Development of a business plan.~~

39 ~~(3) Workshops addressing the following topics:~~

40 ~~(A) Basic information pertaining to contractor bonding.~~

- 1 ~~(B) Understanding the surety process and underwriting.~~
- 2 ~~(C) The process for bidding on state projects.~~
- 3 ~~(D) Addressing stop notices.~~
- 4 ~~(E) Strategies for accessing capital.~~
- 5 ~~(F) Prevailing wages.~~
- 6 ~~(G) Job safety and the Occupational Safety and Health~~
- 7 ~~Administration.~~
- 8 ~~(H) Certification.~~
- 9 ~~(I) Any other topics that would be beneficial to the participating~~
- 10 ~~contractor.~~
- 11 ~~(4) Project field support.~~
- 12 ~~(b) Identification of and assistance in obtaining other financial~~
- 13 ~~support and resources. Activities pursuant to this subdivision may~~
- 14 ~~include the following:~~
- 15 ~~(1) Linkages with accountants, brokers, and surety companies~~
- 16 ~~committed to helping contractors build bonding and organizational~~
- 17 ~~capacity.~~
- 18 ~~(2) Pre-qualifications for additional assistance.~~
- 19 ~~(3) Collateral guarantees.~~
- 20 ~~(e) Monitoring and reporting on the progress of the participating~~
- 21 ~~contractor, including the following:~~
- 22 ~~(1) Collaboration with other programs.~~
- 23 ~~(2) Progress on any project for which a bond is issued pursuant~~
- 24 ~~to this article.~~
- 25 ~~(3) Defaults on a bond issued pursuant to this article.~~
- 26 ~~(4) Funds administration. Notwithstanding subdivision (b) of~~
- 27 ~~Section 14848.50, the office shall not charge a participating~~
- 28 ~~contractor fees for the purpose of this paragraph.~~
- 29 ~~14848.50. (a) The department shall adopt rules and regulations~~
- 30 ~~necessary to implement the provisions of this article.~~
- 31 ~~(b) The office may charge a participating contractor fees for the~~
- 32 ~~provision of services pursuant to this article. The fees shall not~~
- 33 ~~exceed the amount necessary to cover the costs incurred in the~~
- 34 ~~administration of this article.~~
- 35 ~~SEC. 2. Section 10221 of the Public Contract Code is amended~~
- 36 ~~to read:~~
- 37 ~~10221. Every contract shall provide for the filing of separate~~
- 38 ~~performance and payment bonds by the contractor in the form of~~
- 39 ~~bonds executed by either an admitted surety insurer or the Office~~
- 40 ~~of Small Business and Disabled Veteran Business Enterprise~~

- 1 ~~Services pursuant to Section 14848.20 of the Government Code~~
- 2 ~~and not deposits in lieu of bond, subject to the approval of the~~
- 3 ~~department.~~

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