

Introduced by Senators Galgiani and Hueso
(Principal coauthor: Senator Hertzberg)
(Principal coauthor: Assembly Member Jones-Sawyer)

February 18, 2016

An act to amend Sections 14837 and 14838 of the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1176, as introduced, Galgiani. Small Business Procurement and Contract Act: business size.

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 acquisition of goods, services, and information technology and for the construction of state facilities to establish goals for the participation of small businesses and microbusinesses 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. Existing law defines a "small business" for these purposes as, among other things, an independently owned and operated business that is not dominant in its field of operation that has average annual gross receipts of \$10 million, as may be adjusted to reflect changes in the California Consumer Price Index, or less over the previous 3 years. Existing law defines a "microbusiness" as a small business which, together with affiliates, has average annual gross receipts of \$2.5 million, as may be adjusted to reflect changes in the California Consumer Price Index, or less over the previous 3 years. Existing law requires the director to conduct a biennial review of those average annual gross receipt levels and authorizes the

director to adjust the average annual gross receipts threshold to reflect changes in the California Consumer Price Index for all items. Existing law requires a contractor requesting a small business or microbusiness preference to do so under penalty of perjury.

This bill would revise those definitions by increasing the dollar amount threshold for a small business to \$30 million and for a microbusiness to \$5 million and would require those dollar amounts to be adjusted to reflect changes in the California Consumer Price Index biennially. The bill would allow directors of the department and other state agencies to count contractors that would be considered a small business or microbusiness under the changes made by this bill for the year this bill is enacted if the directors are unable to make the small business participation goals under the existing laws. The bill would allow more contractors to qualify as a small business or microbusiness, thus expanding the group of contractors authorized to request a preference filed under penalty of perjury. By expanding the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. The Legislature hereby finds and declares all of
2 the following:
3 (a) The essence of the American economic system of private
4 enterprise is to be free, open, and to have transparent competition.
5 Only through free, open, and transparent competition can free
6 markets, reasonable and just prices, free entry into business, and
7 opportunities for the expression and growth of personal initiative
8 and individual judgment be ensured. The preservation and
9 expansion of that competition are basic to the economic well-being
10 of this state, and that well-being cannot be realized unless the
11 actual and potential capacity of small business enterprises is
12 encouraged and developed.

1 (b) It is the policy of the state to aid the interests of small
2 business enterprises in order to preserve reasonable and just prices
3 and free competitive enterprise, to ensure that a fair proportion of
4 the total purchases and contracts or subcontracts for commodities,
5 supplies, technology, property, and services, including, but not
6 limited to, renewable energy, wireless telecommunications,
7 broadband, smart grid, rail, and other mega infrastructure projects,
8 for regulated state departments are awarded to small business
9 enterprises, and to maintain and strengthen the overall economy
10 of the state.

11 (c) The opportunity for full participation in our free enterprise
12 system by small business enterprises is essential if this state is to
13 attain social and economic equality for those businesses and
14 improve the functioning of the state economy.

15 (d) State agencies that have established small business
16 contracting goals are awarding less than 25 percent of their
17 mandated goals.

18 (e) Small business enterprises have traditionally received less
19 than their proportional share of public entity procurement contracts,
20 especially in renewable energy, wireless telecommunications,
21 broadband, smart grid, rail, and other mega infrastructure projects.

22 (f) It is in the interest of the state to expeditiously improve the
23 economically disadvantaged position of small business owners
24 and employees.

25 (g) The position of small business enterprises can be
26 substantially improved by expanding the definition of a small
27 business that would allow these businesses to amass the capital
28 and expertise necessary to compete for state procurement of
29 technology, equipment, supplies, services, materials, and
30 construction work, especially in renewable energy, wireless
31 telecommunications, broadband, smart grid, rail, and other mega
32 infrastructure projects. This expansion also benefits the state
33 departments and consumers of the state by encouraging the
34 expansion of the number of small business enterprise suppliers for
35 procurements, thereby encouraging competition among the
36 suppliers and promoting economic efficiency in the process.

37 (h) The long-term economic viability of this state depends
38 substantially upon the ability of small businesses to be successful.

39 SEC. 2. It is the intent of the Legislature by enacting this
40 legislation to do all of the following:

1 (a) Encourage greater economic opportunity for small
2 businesses.

3 (b) Promote competition among state departments that issue
4 contracts in order to enhance economic efficiency in the
5 procurement of state services.

6 (c) Clarify and expand the program for the procurement by state
7 departments for small business enterprises.

8 SEC. 3. Section 14837 of the Government Code is amended
9 to read:

10 14837. As used in this chapter:

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

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

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

15 (1) It is primarily engaged in the chemical or mechanical
16 transformation of raw materials or processed substances into new
17 products.

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

20 (d) (1) “Small business” means an independently owned and
21 operated business that is not dominant in its field of operation, the
22 principal office of which is located in California, the officers of
23 which are domiciled in California, and which, together with
24 affiliates, has 100 or fewer employees, and average annual gross
25 receipts of ~~ten million dollars (\$10,000,000)~~ *thirty million dollars*
26 *(\$30,00,000)* or less over the previous three years, or is a
27 manufacturer, as defined in subdivision (c), with 100 or fewer
28 employees.

29 (2) “Microbusiness” is a small business which, together with
30 affiliates, has average annual gross receipts of ~~two million five~~
31 ~~hundred thousand dollars (\$2,500,000)~~ *five million dollars*
32 *(\$5,000,000)* or less over the previous three years, or is a
33 manufacturer, as defined in subdivision (c), with 25 or fewer
34 employees.

35 (3) The director shall conduct a biennial review of the average
36 annual gross receipt levels specified in this subdivision and ~~may~~
37 *shall* adjust that level to reflect changes in the California Consumer
38 Price Index for all items. To reflect unique variations or
39 characteristics of different industries, the director may establish,
40 to the extent necessary, either higher or lower qualifying standards

1 than those specified in this subdivision, or alternative standards
2 based on other applicable criteria.

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

11 (A) A certified small business or microbusiness is deemed to
12 perform a commercially useful function if the business does all of
13 the following:

14 (i) Is responsible for the execution of a distinct element of the
15 work of the contract.

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

18 (iii) Performs work that is normal for its business services and
19 functions.

20 (iv) Is responsible, with respect to products, inventories,
21 materials, and supplies required for the contract, for negotiating
22 price, determining quality and quantity, ordering, installing, if
23 applicable, and making payment.

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

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

33 (e) "Disabled veteran business enterprise" means an enterprise
34 that has been certified as meeting the qualifications established by
35 paragraph (7) of subdivision (b) of Section 999 of the Military and
36 Veterans Code.

37 SEC. 4. Section 14838 of the Government Code is amended
38 to read:

39 14838. In order to facilitate the participation of small business,
40 including microbusiness, in the provision of goods, information

1 technology, and services to the state, and in the construction
2 (including alteration, demolition, repair, or improvement) of state
3 facilities, the directors of the department and other state agencies
4 that enter those contracts, each within their respective areas of
5 responsibility, shall do all of the following:

6 (a) Establish goals, consistent with those established by the
7 Office of Small Business Certification and Resources, for the extent
8 of participation of small businesses, including microbusinesses,
9 in the provision of goods, information technology, and services to
10 the state, and in the construction of state facilities.

11 (b) Provide for small business preference, or nonsmall business
12 preference for bidders that provide for small business and
13 microbusiness subcontractor participation, in the award of contracts
14 for goods, information technology, services, and construction, as
15 follows:

16 (1) In solicitations where an award is to be made to the lowest
17 responsible bidder meeting specifications, the preference to small
18 business and microbusiness shall be 5 percent of the lowest
19 responsible bidder meeting specifications. The preference to
20 nonsmall business bidders that provide for small business or
21 microbusiness subcontractor participation shall be, up to a
22 maximum of 5 percent of the lowest responsible bidder meeting
23 specifications, determined according to rules and regulations
24 established by the Department of General Services.

25 (2) In solicitations where an award is to be made to the highest
26 scored bidder based on evaluation factors in addition to price, the
27 preference to small business or microbusiness shall be 5 percent
28 of the highest responsible bidder's total score. The preference to
29 nonsmall business bidders that provide for small business or
30 microbusiness subcontractor participation shall be up to a
31 maximum 5 percent of the highest responsible bidder's total score,
32 determined according to rules and regulations established by the
33 Department of General Services.

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

37 (4) The preference under paragraph (1) shall not exceed fifty
38 thousand dollars (\$50,000) for any bid, and the combined cost of
39 preferences granted pursuant to paragraph (1) and any other
40 provision of law shall not exceed one hundred thousand dollars

1 (\$100,000). In bids in which the state has reserved the right to
2 make multiple awards, this fifty thousand dollar (\$50,000)
3 maximum preference cost shall be applied, to the extent possible,
4 so as to maximize the dollar participation of small businesses,
5 including microbusinesses, in the contract award.

6 (c) Give special consideration to small businesses and
7 microbusinesses by both:

8 (1) Reducing the experience required.

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

10 (d) Give special assistance to small businesses and
11 microbusinesses in the preparation and submission of the
12 information requested in Section 14310.

13 (e) Under the authorization granted in Section 10163 of the
14 Public Contract Code, make awards, whenever feasible, to small
15 business and microbusiness bidders for each project bid upon
16 within their prequalification rating. This may be accomplished by
17 dividing major projects into subprojects so as to allow a small
18 business or microbusiness contractor to qualify to bid on these
19 subprojects.

20 (f) Small business and microbusiness bidders qualified in
21 accordance with this chapter shall have precedence over nonsmall
22 business bidders in that the application of a bidder preference for
23 which nonsmall business bidders may be eligible under this section
24 or any other provision of law shall not result in the denial of the
25 award to a small business or microbusiness bidder. In the event of
26 a precise tie between the low responsible bid of a bidder meeting
27 specifications of a small business or microbusiness, and the low
28 responsible bid of a bidder meeting the specifications of a disabled
29 veteran-owned small business or microbusiness, the contract shall
30 be awarded to the disabled veteran-owned small business or
31 microbusiness. This provision applies if the small business or
32 microbusiness bidder is the lowest responsible bidder, as well as
33 if the small business or microbusiness bidder is eligible for award
34 as the result of application of the small business and microbusiness
35 bidder preference granted by subdivision (b).

36 (g) *If the directors of the department and other state agencies*
37 *that enter into those contracts are unable to reach the goals*
38 *established under subdivision (a) in the year this measure is*
39 *enacted, the directors of the department and other state agencies*
40 *may count towards that goal, contracts with firms that would be*

1 *considered a small business or microbusiness under the*
2 *amendments made to Section 14837 by the act adding this*
3 *subdivision.*

4 SEC. 5. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.