

AMENDED IN SENATE APRIL 21, 2016

SENATE BILL

No. 1176

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 amended, 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~~ \$15 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 further revise the definition of small business by specifying that, for the purposes of public works contracts, small business means a businesses with 200 or fewer employees and average annual gross receipts of \$25 million or less.* 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

1 and individual judgment be ensured. The preservation and
2 expansion of that competition are basic to the economic well-being
3 of this state, and that well-being cannot be realized unless the
4 actual and potential capacity of small business enterprises is
5 encouraged and developed.

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

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

20 (d) State agencies that have established small business
21 contracting goals are awarding less than 25 percent of their
22 mandated goals.

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

27 (f) It is in the interest of the state to expeditiously improve the
28 economically disadvantaged position of small business owners
29 and employees.

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

1 procurements, thereby encouraging competition among the
2 suppliers and promoting economic efficiency in the process.

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

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

7 (a) Encourage greater economic opportunity for small
8 businesses.

9 (b) Promote competition among state departments that issue
10 contracts in order to enhance economic efficiency in the
11 procurement of state services.

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

14 SEC. 3. Section 14837 of the Government Code is amended
15 to read:

16 14837. As used in this chapter:

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

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

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

21 (1) It is primarily engaged in the chemical or mechanical
22 transformation of raw materials or processed substances into new
23 products.

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

26 (d) (1) (A) “Small business” means an independently owned
27 and operated business that is not dominant in its field of operation,
28 the principal office of which is located in California, the officers
29 of which are domiciled in California, and which, together with
30 affiliates, has 100 or fewer employees, and average annual gross
31 receipts of ~~thirty million dollars (\$30,00,000)~~ *fifteen million dollars*
32 *(\$15,000,000)* or less over the previous three years, or is a
33 manufacturer, as defined in subdivision (c), with 100 or fewer
34 employees.

35 (B) *For the purposes of public works contracts, contracts*
36 *awarded through competitive bids or otherwise for the erection,*
37 *construction, alteration, repair, or improvement of any kind upon*
38 *real property, “small business” means an independently owned*
39 *and operated business that is not dominant in its field of operation,*
40 *the principal office of which is located in California, the officers*

1 *of which are domiciled in California, and which, together with*
2 *affiliates, has 200 or fewer employees, and average annual gross*
3 *receipts of twenty-five million dollars (\$25,000,000) or less over*
4 *the previous three years.*

5 (2) “Microbusiness” is a small business which, together with
6 affiliates, has average annual gross receipts of five million dollars
7 (\$5,000,000) or less over the previous three years, or is a
8 manufacturer, as defined in subdivision (c), with 25 or fewer
9 employees.

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

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

26 (A) A certified small business or microbusiness is deemed to
27 perform a commercially useful function if the business does all of
28 the following:

29 (i) Is responsible for the execution of a distinct element of the
30 work of the contract.

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

33 (iii) Performs work that is normal for its business services and
34 functions.

35 (iv) Is responsible, with respect to products, inventories,
36 materials, and supplies required for the contract, for negotiating
37 price, determining quality and quantity, ordering, installing, if
38 applicable, and making payment.

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 (B) 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 small
9 business or microbusiness participation.

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

14 SEC. 4. Section 14838 of the Government Code is amended
15 to read:

16 14838. In order to facilitate the participation of small business,
17 including microbusiness, in the provision of goods, information
18 technology, and services to the state, and in the construction
19 (including alteration, demolition, repair, or improvement) of state
20 facilities, the directors of the department and other state agencies
21 that enter those contracts, each within their respective areas of
22 responsibility, shall do all of the following:

23 (a) Establish goals, consistent with those established by the
24 Office of Small Business Certification and Resources, for the extent
25 of participation of small businesses, including microbusinesses,
26 in the provision of goods, information technology, and services to
27 the state, and in the construction of state facilities.

28 (b) Provide for small business preference, or nonsmall business
29 preference for bidders that provide for small business and
30 microbusiness subcontractor participation, in the award of contracts
31 for goods, information technology, services, and construction, as
32 follows:

33 (1) In solicitations where an award is to be made to the lowest
34 responsible bidder meeting specifications, the preference to small
35 business and microbusiness shall be 5 percent of the lowest
36 responsible bidder meeting specifications. The preference to
37 nonsmall business bidders that provide for small business or
38 microbusiness subcontractor participation shall be, up to a
39 maximum of 5 percent of the lowest responsible bidder meeting

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

3 (2) In solicitations where an award is to be made to the highest
4 scored bidder based on evaluation factors in addition to price, the
5 preference to small business or microbusiness shall be 5 percent
6 of the highest responsible bidder's total score. The preference to
7 nonsmall business bidders that provide for small business or
8 microbusiness subcontractor participation shall be up to a
9 maximum 5 percent of the highest responsible bidder's total score,
10 determined according to rules and regulations established by the
11 Department of General Services.

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

15 (4) The preference under paragraph (1) shall not exceed fifty
16 thousand dollars (\$50,000) for any bid, and the combined cost of
17 preferences granted pursuant to paragraph (1) and any other
18 provision of law shall not exceed one hundred thousand dollars
19 (\$100,000). In bids in which the state has reserved the right to
20 make multiple awards, this fifty thousand dollar (\$50,000)
21 maximum preference cost shall be applied, to the extent possible,
22 so as to maximize the dollar participation of small businesses,
23 including microbusinesses, in the contract award.

24 (c) Give special consideration to small businesses and
25 microbusinesses by both:

26 (1) Reducing the experience required.

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

28 (d) Give special assistance to small businesses and
29 microbusinesses in the preparation and submission of the
30 information requested in Section 14310.

31 (e) Under the authorization granted in Section 10163 of the
32 Public Contract Code, make awards, whenever feasible, to small
33 business and microbusiness bidders for each project bid upon
34 within their prequalification rating. This may be accomplished by
35 dividing major projects into subprojects so as to allow a small
36 business or microbusiness contractor to qualify to bid on these
37 subprojects.

38 (f) Small business and microbusiness bidders qualified in
39 accordance with this chapter shall have precedence over nonsmall
40 business bidders in that the application of a bidder preference for

1 which nonsmall business bidders may be eligible under this section
2 or any other provision of law shall not result in the denial of the
3 award to a small business or microbusiness bidder. In the event of
4 a precise tie between the low responsible bid of a bidder meeting
5 specifications of a small business or microbusiness, and the low
6 responsible bid of a bidder meeting the specifications of a disabled
7 veteran-owned small business or microbusiness, the contract shall
8 be awarded to the disabled veteran-owned small business or
9 microbusiness. This provision applies if the small business or
10 microbusiness bidder is the lowest responsible bidder, as well as
11 if the small business or microbusiness bidder is eligible for award
12 as the result of application of the small business and microbusiness
13 bidder preference granted by subdivision (b).

14 (g) If the directors of the department and other state agencies
15 that enter into those contracts are unable to reach the goals
16 established under subdivision (a) in the year ~~this measure is enacted~~
17 *in which the act that added this subdivision takes effect*, the
18 directors of the department and other state agencies may count
19 towards that goal, contracts with firms that would be considered
20 a small business or microbusiness under the amendments made to
21 Section 14837 by the act adding this subdivision.

22 SEC. 5. No reimbursement is required by this act pursuant to
23 Section 6 of Article XIII B of the California Constitution because
24 the only costs that may be incurred by a local agency or school
25 district will be incurred because this act creates a new crime or
26 infraction, eliminates a crime or infraction, or changes the penalty
27 for a crime or infraction, within the meaning of Section 17556 of
28 the Government Code, or changes the definition of a crime within
29 the meaning of Section 6 of Article XIII B of the California
30 Constitution.