

Introduced by Senator Hancock
(Coauthor: Assembly Member Jones-Sawyer)

February 18, 2016

An act to amend Sections 14836, 14837, 14838, 14838.5, 14838.64, 14838.7, 14839, 14839.1, 14840, 14842, and 14842.5 of the Government Code, relating to state contracting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1219, as introduced, Hancock. Small Business Procurement and Contract Act: employment social enterprises.

Existing law, the Small Business Procurement and Contract Act, grants a specified preference for small businesses and microbusinesses in the award a contract for goods, services, or information technology to the state and in the construction of state facilities. Existing law defines small business and microbusiness for these and other purposes. Existing law permits a state agency and the California State University to award specified types of contracts with a value of between \$5,000 and \$250,000 to a certified small business, including a microbusiness and a disabled veteran business enterprise, without complying with certain competitive bidding requirements, provided the agency obtains price quotations from at least 2 small businesses, including microbusinesses, or 2 or disabled veteran business enterprises. Existing law establishes the Office of Small Business and Disabled Veteran Business Enterprise Service and prescribes duties for the office, which include maintaining a bidders list of small businesses and disabled veteran businesses and is to identify which small businesses also qualify as microbusiness. Existing law prescribes penalties for a small business or microbusiness that provides incorrect information or withholds information that leads

to its incorrect classification as such an entity and is awarded a contract because of that classification.

This bill would grant an employment social enterprise the preference and status that is provided to a microbusiness for purposes of the provisions described above. The bill would define an employment social enterprise as a nonprofit or for-profit mission-driven business focused on hiring and assisting people who have significant barriers to employment and at least 51% of the business' employees have these barriers. The bill would define "people facing significant barriers to employment" to include people who have been incarcerated, people who are, or have been, homeless, youth and young adults disconnected from school or work, and people with disabilities such as substance addiction or mental illness.

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 14836 of the Government Code is
2 amended to read:

3 14836. (a) The Legislature hereby declares that it serves a
4 public purpose, and it is of benefit to the state, to promote and
5 facilitate the fullest possible participation by all citizens in the
6 affairs of the State of California in every possible way. It is also
7 essential that opportunity is provided for full participation in our
8 free enterprise system by small business enterprises.

9 (b) Further, it is the declared policy of the Legislature that the
10 state should aid, counsel, assist, and protect, to the maximum extent
11 possible, the interests of small business concerns, including
12 ~~microbusinesses~~, *microbusinesses and employment social*
13 *enterprises*, in order to preserve free competitive enterprise and
14 to ensure that a fair proportion of the total purchases and contracts
15 or subcontracts for property and services for the state be placed
16 with these enterprises.

17 SEC. 2. Section 14837 of the Government Code is amended
18 to read:

19 14837. As used in this chapter:

20 (a) "Department" means the Department of General Services.

21 (b) "Director" means the Director of General Services.

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

3 (1) It is primarily engaged in the chemical or mechanical
4 transformation of raw materials or processed substances into new
5 products.

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

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

16 (2) “Microbusiness” is a small business which, together with
17 affiliates, has average annual gross receipts of two million five
18 hundred thousand dollars (\$2,500,000) or less over the previous
19 three years, or is a manufacturer, as defined in subdivision (c),
20 with 25 or fewer employees.

21 (3) *“Employment social enterprise” is a nonprofit or for profit*
22 *mission-driven business focused on hiring and assisting people*
23 *who have significant barriers to employment and at least 51*
24 *percent of business’ employees have these barriers. “People who*
25 *have significant barriers to employment” includes, but is not*
26 *limited to, people who have been incarcerated, people who are,*
27 *or have been, homeless, youth and young adults disconnected from*
28 *school or work, and people with disabilities such as substance*
29 *addiction or mental illness.*

30 ~~(3)~~

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

39 ~~(4)~~

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

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

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

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

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

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

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

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

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

SEC. 3. Section 14838 of the Government Code is amended to read:

14838. In order to facilitate the participation of small business, including ~~microbusiness~~, *microbusiness and employment social enterprise*, in the provision of goods, information technology, and

1 services to the state, and in the construction (including alteration,
2 demolition, repair, or improvement) of state facilities, the directors
3 of the department and other state agencies that enter those contracts,
4 each within their respective areas of responsibility, shall do all of
5 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 *microbusinesses and employment social enterprises*, in the
10 provision of goods, information technology, and services to the
11 state, and in the construction of state facilities.

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

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

29 (2) In solicitations where an award is to be made to the highest
30 scored bidder based on evaluation factors in addition to price, the
31 preference to small ~~business or microbusiness~~ *business,*
32 *microbusiness, or employment social enterprise* shall be 5 percent
33 of the highest responsible bidder's total score. The preference to
34 nonsmall business bidders that provide for small ~~business or~~
35 ~~microbusiness~~ *business, microbusiness, or employment social*
36 *enterprise* subcontractor participation shall be up to a maximum
37 5 percent of the highest responsible bidder's total score, determined
38 according to rules and regulations established by the Department
39 of General Services.

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

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

(c) Give special consideration to small ~~businesses and microbusinesses~~ *businesses, microbusinesses, and employment social enterprises* by both:

(1) Reducing the experience required.

(2) Reducing the level of inventory normally required.

(d) Give special assistance to small ~~businesses and microbusinesses~~ *businesses, microbusinesses, and employment social enterprises* in the preparation and submission of the information requested in Section 14310.

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

(f) Small ~~business and microbusiness~~ *business, microbusiness, and employment social enterprise* bidders qualified in accordance with this chapter shall have precedence over nonsmall business bidders in that the application of a bidder preference for which nonsmall business bidders may be eligible under this section or any other provision of law shall not result in the denial of the award to a small ~~business or microbusiness~~ *business, microbusiness, or employment social enterprise* bidder. In the event of a precise tie between the low responsible bid of a bidder meeting specifications of a small ~~business or microbusiness~~, *business, microbusiness, or*

1 *employment social enterprise* and the low responsible bid of a
 2 bidder meeting the specifications of a disabled veteran-owned
 3 small ~~business or microbusiness~~, *business, microbusiness, or*
 4 *employment social enterprise*, the contract shall be awarded to the
 5 disabled veteran-owned small ~~business or microbusiness~~. *business,*
 6 *microbusiness, or employment social enterprise*. This provision
 7 applies if the small ~~business or microbusiness~~ *business,*
 8 *microbusiness, or employment social enterprise* bidder is the lowest
 9 responsible bidder, as well as if the small ~~business or microbusiness~~
 10 *business, microbusiness, or employment social enterprise* bidder
 11 is eligible for award as the result of application of the small
 12 ~~business and microbusiness~~ *business, microbusiness, and*
 13 *employment social enterprise* bidder preference granted by
 14 subdivision (b).

15 SEC. 4. Section 14838.5 of the Government Code is amended
 16 to read:

17 14838.5. (a) Notwithstanding the advertising, bidding, and
 18 protest provisions of Chapter 6 (commencing with Section 14825)
 19 of this part and Chapter 2 (commencing with Section 10290) and
 20 Chapter 3 (commencing with Section 12100) of Part 2 of Division
 21 2 of the Public Contract Code, a state agency may award a contract
 22 for the acquisition of goods, services, or information technology
 23 that has an estimated value of greater than five thousand dollars
 24 (\$5,000), but less than two hundred fifty thousand dollars
 25 (\$250,000), to a certified small business, including a ~~microbusiness~~,
 26 *microbusiness or employment social enterprise*, or to a disabled
 27 veteran business enterprise, as long as the agency obtains price
 28 quotations from two or more certified small businesses, including
 29 ~~microbusinesses~~, *microbusinesses or employment social*
 30 *enterprises*, or from two or more disabled veterans business
 31 enterprises.

32 (b) In carrying out subdivision (a), a state agency shall consider
 33 a responsive offer timely received from a responsible certified
 34 small business, including a ~~microbusiness~~, *microbusiness or*
 35 *employment social enterprise*, or from a disabled veteran business
 36 enterprise.

37 (c) If the estimated cost to the state is less than five thousand
 38 dollars (\$5,000) for the acquisition of goods, services, or
 39 information technology, or a greater amount as administratively
 40 established by the director, a state agency shall obtain at least two

1 price quotations from responsible suppliers whenever there is
2 reason to believe a response from a single source is not a fair and
3 reasonable price.

4 SEC. 5. Section 14838.64 of the Government Code is amended
5 to read:

6 14838.64. (a) Notwithstanding any other law, including, but
7 not limited to, the advertising, bidding, and protest provisions of
8 Chapter 6 (commencing with Section 14825) of this part and
9 Chapter 2.5 (commencing with Section 10700) and Chapter 3
10 (commencing with Section 12100) of Part 2 of Division 2 of the
11 Public Contract Code, the California State University may award
12 a contract for the acquisition of goods, services, or information
13 technology that has an estimated value of greater than five thousand
14 dollars (\$5,000), but less than two hundred fifty thousand dollars
15 (\$250,000), to a certified small business, including a ~~microbusiness~~,
16 *microbusiness or employment social enterprise*, or to a disabled
17 veteran business enterprise, if the California State University
18 obtains price quotations from two or more certified small
19 businesses, including ~~microbusinesses~~, *microbusinesses or*
20 *employment social enterprises*, or from two or more disabled
21 veteran business enterprises.

22 (b) In carrying out subdivision (a), the California State
23 University shall consider a responsive offer timely received from
24 a responsible certified small business, including a ~~microbusiness~~,
25 *microbusiness or employment social enterprise*, or from a disabled
26 veteran business enterprise.

27 SEC. 6. Section 14838.7 of the Government Code is amended
28 to read:

29 14838.7. (a) Notwithstanding the advertising and bidding
30 provisions of Chapter 6 (commencing with Section 14825) of this
31 code and Chapter 1 (commencing with Section 10100) of Part 2
32 of Division 2 of the Public Contract Code, a state agency may
33 award a contract for construction, including the erection,
34 construction, alteration, repair, or improvement of any state
35 structure, building, road, or other state improvement of any kind
36 that has an estimated value of greater than five thousand dollars
37 (\$5,000) but less than the cost limit, as specified in subdivision
38 (b) of Section 10105 of the Public Contract Code, to a certified
39 small business, including a ~~microbusiness~~, *microbusiness or*
40 *employment social enterprise*, or to a disabled veteran business

enterprise, as long as the agency obtains written bid submittals from two or more certified small businesses, including ~~microbusinesses~~, *microbusinesses or employment social enterprises*, or from two or more disabled veteran business enterprises.

(b) In implementing subdivision (a), state agencies shall consider a responsive offer timely received from a responsible certified small business, including a ~~microbusiness~~, *microbusiness or employment social enterprise*, or from a disabled veteran business enterprise.

(c) If the estimated cost to the state is less than five thousand dollars (\$5,000) for the public work construction project, a state agency shall obtain at least two written bid submittals from responsible contractors whenever there is reason to believe a response from a single source is not a fair and reasonable price.

SEC. 7. Section 14839 of the Government Code is amended to read:

14839. There is hereby established within the department the Office of Small Business and Disabled Veteran Business Enterprise Services. The duties of the office shall include:

(a) Compiling and maintaining a comprehensive bidders list of qualified small businesses and disabled veteran business enterprises, and noting which small businesses also qualify as ~~microbusinesses~~. *microbusinesses or employment social enterprises*.

(b) Coordinating with the Federal Small Business Administration, the Minority Business Development Agency, and the Office of Small Business Development of the Department of Economic and Business Development.

(c) Providing technical and managerial aids to small businesses, microbusinesses, *employment social enterprises*, and disabled veteran business enterprises, by conducting workshops on matters in connection with government procurement and contracting.

(d) Assisting small businesses, microbusinesses, *employment social enterprises*, and disabled veteran business enterprises, in complying with the procedures for bidding on state contracts.

(e) Working with appropriate state, federal, local, and private organizations and business enterprises in disseminating information on bidding procedures and opportunities available to small

1 businesses, microbusinesses, *employment social enterprises*, and
2 disabled veteran business enterprises.

3 (f) Making recommendations to the department and other state
4 agencies for simplification of specifications and terms in order to
5 increase the opportunities for small business, microbusiness,
6 *employment social enterprises*, and disabled veteran business
7 enterprise participation.

8 (g) Developing, by regulation, other programs and practices
9 that are reasonably necessary to aid and protect the interest of small
10 businesses, microbusinesses, *employment social enterprises*, and
11 disabled veteran business enterprises in contracting with the state.

12 (h) Making efforts to develop, in cooperation with associations
13 representing counties, cities, and special districts, a core statewide
14 small business certification application that may be adopted by all
15 participating entities, with any supplemental provisions to be added
16 as necessary by the respective entities.

17 (i) The information furnished by each contractor requesting a
18 small ~~business or microbusiness~~ *business, microbusiness, or*
19 *employment social enterprise* preference shall be under penalty of
20 perjury.

21 SEC. 8. Section 14839.1 of the Government Code is amended
22 to read:

23 14839.1. (a) The department shall have sole responsibility for
24 certifying and determining the eligibility of small ~~businesses and~~
25 ~~microbusinesses~~ *businesses, microbusinesses, and employment*
26 *social enterprises*, under this chapter.

27 (b) Local agencies shall have access to the department's list of
28 certified small businesses on the department's Internet Web site,
29 which is available to the public, for use as a reference guide to
30 confirm a small business certification.

31 SEC. 9. Section 14840 of the Government Code is amended
32 to read:

33 14840. (a) In the process of certifying and determining the
34 eligibility of a disabled veteran business enterprise or a small
35 business enterprise, including a ~~microbusiness~~, *microbusiness and*
36 *employment social enterprise*, the department shall require the
37 applicant or certified firm to submit a written declaration, under
38 penalty of perjury, that the information submitted to the department
39 pursuant to this chapter, and in the case of a disabled veteran
40 enterprise all information submitted to the department pursuant to

1 Section 999.2 of the Military and Veterans Code, is true and
2 correct.

3 (b) (1) If the department determines that just cause exists, it
4 may require the owner of the disabled veteran business enterprise,
5 microbusiness, *employment social enterprise*, or small business,
6 the applicant, or the certified firm to complete and submit to the
7 department a federal Form 4506-T from the Internal Revenue
8 Service, United States Department of the Treasury, requesting a
9 transcript of a tax return.

10 (2) For the purposes of this subdivision, “just cause” means
11 either of the following circumstances exists:

12 (A) The department receives a complaint regarding the certified
13 firm.

14 (B) The department determines, based on its findings during
15 the course of any certification eligibility review of the applicant
16 or certified firm, that the action described in paragraph (1) is
17 necessary.

18 SEC. 10. Section 14842 of the Government Code is amended
19 to read:

20 14842. (a) A business that has obtained classification as a
21 ~~small-business or microbusiness~~ *business, microbusiness, or*
22 *employment social enterprise*, by reason of having furnished
23 incorrect supporting information or by reason of having withheld
24 information, and that knew, or should have known, the information
25 furnished was incorrect or the information withheld was relevant
26 to its request for classification, and that by reason of that
27 classification has been awarded a contract to which it would not
28 otherwise have been entitled, shall do all of the following:

29 (1) Pay to the state any difference between the contract amount
30 and what the state’s costs would have been if the contract had been
31 properly awarded.

32 (2) Pay to the awarding state agency and the department an
33 amount that is equal to the costs incurred for investigating the
34 small business or microbusiness certification that led to the finding
35 that the contract had been improperly awarded. Costs incurred
36 shall include, but are not limited to, costs and attorney’s fees paid
37 by the awarding state agency or the department related to hearings
38 and court appearances.

1 (3) In addition to the amounts described in paragraphs (1) and
2 (2), be assessed a penalty in an amount of not more than 10 percent
3 of the amount of the contract involved.

4 (b) The department shall suspend any person who violates
5 subdivision (a) from transacting any business with the state either
6 directly as a prime contractor or indirectly as a subcontractor, for
7 a period of not less than three years and not more than 10 years.
8 State agencies may reject the bid of a supplier offering goods,
9 information technology, or services manufactured or provided by
10 a subcontractor if that subcontractor has been declared ineligible
11 to transact any business with the state under this chapter, even
12 though the bidder is a business in good standing.

13 (c) All payments to the state pursuant to paragraphs (1) and (2)
14 of subdivision (a) shall be deposited in the fund or funds out of
15 which payments on the contract involved were made, except
16 payments to the department made pursuant to paragraph (2) of
17 subdivision (a) shall be deposited in the Service Revolving Fund.

18 (d) All payments to the state pursuant to paragraph (3) of
19 subdivision (a) shall be deposited in the state General Fund.

20 (e) The small business certification, and the disabled veteran
21 business enterprise certification if the business has both
22 certifications, of a business found to have violated subdivision (a)
23 shall be revoked by the department for a period of not less than
24 five years. For an additional or subsequent violation, the period
25 of certification revocation or suspension shall be extended for a
26 period of up to 10 years. The certification revocation shall apply
27 to the principals of the business and any subsequent businesses
28 formed by one or more of those principals.

29 (f) Prior to the imposition of any sanctions under this article, a
30 business shall be entitled to a public hearing and to at least five
31 working days' notice of the time and place thereof. The notice
32 shall state the reasons for the hearing.

33 (g) Any business or person that fails to satisfy any of the
34 amounts specified in paragraphs (1) to (3), inclusive, of subdivision
35 (a) shall be prohibited from further contracting with the state until
36 all amounts are satisfied.

37 (h) For purposes of this section, "awarding state agency" means
38 a state agency or other state governmental entity that awarded the
39 contract, if it was not awarded by the department.

1 SEC. 11. Section 14842.5 of the Government Code is amended
2 to read:

3 14842.5. (a) It shall be unlawful for a person to do any of the
4 following:

5 (1) Knowingly and with intent to defraud, fraudulently obtain,
6 retain, attempt to obtain or retain, or aid another in fraudulently
7 obtaining or retaining or attempting to obtain or retain, certification
8 as a small business or microbusiness enterprise for the purposes
9 of this chapter.

10 (2) Willfully and knowingly make a false statement with the
11 intent to defraud, whether by affidavit, report, or other
12 representation, to a state official or employee for the purpose of
13 influencing the certification or denial of certification of any entity
14 as a small business or microbusiness enterprise.

15 (3) Willfully and knowingly obstruct, impede, or attempt to
16 obstruct or impede, any state official or employee who is
17 investigating the qualifications of a business entity that has
18 requested certification as a small business or microbusiness
19 enterprise.

20 (4) Knowingly and with intent to defraud, fraudulently obtain,
21 attempt to obtain, or aid another person in fraudulently obtaining
22 or attempting to obtain, public moneys, contracts, or funds
23 expended under a contract, that are awarded by any state agency,
24 department, officer, or other state governmental agency, to which
25 the person is not entitled under this chapter.

26 (5) Knowingly and with intent to defraud, fraudulently represent
27 certified small business or microbusiness participation in order to
28 obtain or retain a bid preference or a state contract.

29 (6) Knowingly and with intent to defraud, fraudulently represent
30 that a commercially useful function is being performed by a
31 certified small business or microbusiness in order to obtain or
32 retain a bid preference or a state contract.

33 (7) Willfully and knowingly make or subscribe to any statement,
34 declaration, or other document that is fraudulent or false as to any
35 material matter, whether or not that falsity or fraud is committed
36 with the knowledge or consent of the person authorized or required
37 to present the declaration, statement, or document.

38 (8) Willfully and knowingly aid or assist in, or procure, counsel,
39 or advise, the preparation or presentation of a declaration,
40 statement, or other document that is fraudulent or false as to any

1 material matter, regardless of whether that falsity or fraud is
2 committed with the knowledge or consent of the person authorized
3 or required to present the declaration, statement, or document.

4 (9) Establish, or knowingly aid in the establishment of, or
5 exercise control over, a firm found to have violated any provision
6 of paragraphs (1) to (8), inclusive.

7 (b) (1) Any person who is found by the department to have
8 violated any of the provisions of subdivision (a) is subject to a
9 civil penalty of not less than ten thousand dollars (\$10,000) nor
10 more than thirty thousand dollars (\$30,000) for the first violation,
11 and a civil penalty of not less than thirty thousand dollars (\$30,000)
12 nor more than fifty thousand dollars (\$50,000) for each additional
13 or subsequent violation.

14 (2) A person who violates any of the provisions of subdivision
15 (a) shall pay all costs incurred by the awarding department and
16 the Department of General Services for any investigations that led
17 to the finding of the violation. Costs incurred shall include, but
18 are not limited to, costs and attorney's fees paid by the awarding
19 state agency or the department related to hearings and court
20 appearances. All payments to the state pursuant to this paragraph
21 shall be deposited in the fund or funds out of which payments on
22 the contract involved were made, except payments to the
23 department shall be deposited in the Service Revolving Fund.

24 (c) The department shall revoke the small~~—business—~~or
25 ~~microbusiness~~ *business, microbusiness, or employment social*
26 *enterprise* certification, and the disabled veteran business enterprise
27 certification if the business has both certifications, of any person
28 that violates subdivision (a) for a period of not less than five years,
29 and shall, in addition to the penalties provided for in subdivision
30 (b), suspend the person from bidding on, or participating as a
31 contractor, a subcontractor, or a supplier in, any state contract or
32 project for a period of not less than three years nor more than 10
33 years. However, for an additional or subsequent violation, the
34 period of certification revocation or suspension shall be extended
35 for a period of up to three years. The certification revocation shall
36 apply to the principals of the business and any subsequent
37 businesses formed by one or more of those principals. Any business
38 or person who fails to satisfy any of the penalties imposed pursuant
39 to paragraphs (1) and (2) of subdivision (b) shall be prohibited

1 from further contracting with the state until the penalties are
2 satisfied.

3 (d) If a contractor, subcontractor, supplier, subsidiary, or affiliate
4 thereof, has been found by the department to have violated
5 subdivision (a) and that violation occurred within three years of
6 another violation of subdivision (a) found by the department, the
7 department shall prohibit that contractor, subcontractor, supplier,
8 subsidiary, or affiliate thereof, from entering into a state project
9 or state contract and from further bidding to a state entity, and
10 from being a subcontractor to a contractor for a state entity, and
11 from being a supplier to a state entity.

12 (e) (1) In addition to the penalties imposed by this section, if
13 a contractor is found to be in violation of paragraph (6) of
14 subdivision (a), any existing contract between that contractor and
15 any awarding department may be terminated at the discretion of
16 the awarding state agency, and, where payment to the contractor
17 is made directly by the state agency, the agency shall set off
18 penalties and costs due to the state against any payments due to
19 that contractor. In the event that the contracting state agency has
20 forwarded the contract and invoices to the Controller for payment,
21 the state agency shall reduce the amount due to the contractor as
22 reflected in the claim schedule submitted to the Controller by the
23 amount of the penalties and costs due the state. In addition, with
24 regard to any penalties and costs due to the state that the state
25 agency has not accounted for by either a set off against payments
26 due to the contractor or a reduction reflected in the claim schedule
27 submitted to the Controller, to the extent that the Controller is
28 making payments to the contractor on behalf of any state agency,
29 the Controller shall set off penalties and costs due against any
30 invoices due to the contractor from any other contract awarded to
31 the contractor.

32 (2) For purposes of this section:

33 (A) "Awarding state agency" means any state agency,
34 department, governmental entity, or other officer or entity
35 empowered by law to enter into contracts on behalf of the State
36 of California.

37 (B) "Contractor" means any person or persons, firm, partnership,
38 corporation, or combination thereof who submits a bid and enters
39 into a contract with a representative of a state agency, department,

- 1 governmental entity, or other officer empowered by law to enter
- 2 into contracts on behalf of the State of California.

O