

AMENDED IN SENATE APRIL 4, 2016

SENATE BILL

No. 1219

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 amended, 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 or more~~ small businesses, including microbusinesses, or 2 or *more* disabled veteran business enterprises. Existing law establishes the Office of Small Business and Disabled Veteran Business Enterprise ~~Service Services~~ and prescribes duties for the office, which include maintaining a bidders list of small businesses and disabled veteran businesses and ~~is to identify~~ *noting* which small businesses also qualify as ~~microbusiness~~. *microbusinesses*. 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~~ *business dedicated to hiring and assisting individuals who face* significant barriers to employment and at least 51% of the business' employees have these barriers. The bill would define ~~“people facing~~ *“individuals who face* significant barriers to employment” to include ~~people~~ *individuals* who have been incarcerated, ~~people~~ *individuals* who are, or have been, homeless, youth and young adults disconnected from school or work, and ~~people~~ *individuals* with ~~disabilities such as~~ *disabilities, including, but not limited to*, 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.~~ *enterprises,*
- 9 *and employment social enterprises that provide jobs for individuals*
- 10 *who have experienced significant barriers to employment, such*
- 11 *as incarceration, homelessness, disability, and youth disconnected*
- 12 *from school and work.*
- 13 (b) Further, it is the declared policy of the Legislature that the
- 14 state should aid, counsel, assist, and protect, to the maximum extent
- 15 possible, the interests of small business concerns, including
- 16 microbusinesses and employment social enterprises, in order to
- 17 preserve free competitive enterprise and to ensure that a fair

1 proportion of the total purchases and contracts or subcontracts for
2 property and services for the state be placed with these enterprises.

3 SEC. 2. Section 14837 of the Government Code is amended
4 to read:

5 14837. As used in this chapter:

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

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

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

10 (1) It is primarily engaged in the chemical or mechanical
11 transformation of raw materials or processed substances into new
12 products.

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

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

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

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

37 *(3) “Employment social enterprise” is a nonprofit or for-profit*
38 *business dedicated to hiring and assisting individuals who face*
39 *significant barriers to employment and at least 51 percent of the*
40 *business’ employees have these barriers. “Individuals who face*

1 *significant barriers to employment” include, but are not limited*
2 *to, individuals who have been incarcerated, individuals who are,*
3 *or have been, homeless, youth and young adults disconnected from*
4 *school or work, and individuals with disabilities, including, but*
5 *not limited to, substance addiction and mental illness.*

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

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

24 (A) A certified small ~~business or microbusiness~~ *business,*
25 *microbusiness, or employment social enterprise* is deemed to
26 perform a commercially useful function if the business does all of
27 the following:

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

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

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

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

38 (v) Is not further subcontracting a portion of the work that is
39 greater than that expected to be subcontracted by normal industry
40 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~~ *business, microbusiness, or employment social enterprise* 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 and employment social enterprise, in the provision of goods, information technology, and services to the state, and in the construction (including alteration, demolition, repair, or improvement) of state facilities, the directors of the department and other state agencies that enter those contracts, each within their respective areas of responsibility, shall do all of the following:

(a) Establish goals, consistent with those established by the Office of Small Business Certification and Resources, for the extent of participation of small businesses, including ~~microbusinesses~~ *microbusinesses*, and employment social enterprises, in the provision of goods, information technology, and services to the state, and in the construction of state facilities.

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

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

1 determined according to rules and regulations established by the
2 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, microbusiness, or employment social
6 enterprise shall be 5 percent of the highest responsible bidder's
7 total score. The preference to nonsmall business bidders that
8 provide for small business, microbusiness, or employment social
9 enterprise subcontractor participation shall be up to a maximum
10 5 percent of the highest responsible bidder's total score, determined
11 according to rules and regulations established by the Department
12 of General Services.

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

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

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

28 (1) Reducing the experience required.

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

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

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

(f) Small 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, 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, microbusiness, or employment social enterprise and the low responsible bid of a bidder meeting the specifications of a disabled veteran-owned small business, microbusiness, or employment social enterprise, the contract shall be awarded to the disabled veteran-owned small business, microbusiness, or employment social enterprise. This provision applies if the small business, microbusiness, or employment social enterprise bidder is the lowest responsible bidder, as well as if the small business, microbusiness, or employment social enterprise bidder is eligible for award as the result of application of the small business, microbusiness, and employment social enterprise bidder preference granted by subdivision (b).

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

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

(b) In carrying out subdivision (a), a state agency shall consider a responsive offer timely received from a responsible certified

1 small business, including a ~~microbusiness~~ or *microbusiness*, or
2 *from an* employment social enterprise, or from a disabled veteran
3 business enterprise.

4 (c) If the estimated cost to the state is less than five thousand
5 dollars (\$5,000) for the acquisition of goods, services, or
6 information technology, or a greater amount as administratively
7 established by the director, a state agency shall obtain at least two
8 price quotations from responsible suppliers whenever there is
9 reason to believe a response from a single source is not a fair and
10 reasonable price.

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

13 14838.64. (a) Notwithstanding any other law, including, but
14 not limited to, the advertising, bidding, and protest provisions of
15 Chapter 6 (commencing with Section 14825) of this part and
16 Chapter 2.5 (commencing with Section 10700) and Chapter 3
17 (commencing with Section 12100) of Part 2 of Division 2 of the
18 Public Contract Code, the California State University may award
19 a contract for the acquisition of goods, services, or information
20 technology that has an estimated value of greater than five thousand
21 dollars (\$5,000), but less than two hundred fifty thousand dollars
22 (\$250,000), to a certified small business, including a ~~microbusiness~~
23 ~~or microbusiness~~, or *to an* employment social enterprise, or to a
24 disabled veteran business enterprise, if the California State
25 University obtains price quotations from two or more certified
26 small businesses, including ~~microbusinesses~~ or *microbusinesses*,
27 *or from two or more* employment social enterprises, or from two
28 or more disabled veteran business enterprises.

29 (b) In carrying out subdivision (a), the California State
30 University shall consider a responsive offer timely received from
31 a responsible certified small business, including a ~~microbusiness~~
32 ~~or microbusiness~~, or *from an* employment social enterprise, or
33 from a disabled veteran business enterprise.

34 SEC. 6. Section 14838.7 of the Government Code is amended
35 to read:

36 14838.7. (a) Notwithstanding the advertising and bidding
37 provisions of Chapter 6 (commencing with Section 14825) of this
38 code and Chapter 1 (commencing with Section 10100) of Part 2
39 of Division 2 of the Public Contract Code, a state agency may
40 award a contract for construction, including the erection,

1 construction, alteration, repair, or improvement of any state
2 structure, building, road, or other state improvement of any kind
3 that has an estimated value of greater than five thousand dollars
4 (\$5,000) but less than the cost limit, as specified in subdivision
5 (b) of Section 10105 of the Public Contract Code, to a certified
6 small business, including a ~~microbusiness or microbusiness, or to~~
7 ~~an employment social enterprise, or to a disabled veteran business~~
8 ~~enterprise, as long as the agency obtains written bid submittals~~
9 ~~from two or more certified small businesses, including~~
10 ~~microbusinesses or microbusinesses, or from two or more~~
11 ~~employment social enterprises, or from two or more disabled~~
12 ~~veteran business enterprises.~~

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

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

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

25 14839. There is hereby established within the department the
26 Office of Small Business and Disabled Veteran Business Enterprise
27 Services. The duties of the office shall include:

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

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

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

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

4 (e) Working with appropriate state, federal, local, and private
5 organizations and business enterprises in disseminating information
6 on bidding procedures and opportunities available to small
7 businesses, microbusinesses, employment social enterprises, and
8 disabled veteran business enterprises.

9 (f) Making recommendations to the department and other state
10 agencies for simplification of specifications and terms in order to
11 increase the opportunities for small business, microbusiness,
12 employment social enterprises, and disabled veteran business
13 enterprise participation.

14 (g) Developing, by regulation, other programs and practices
15 that are reasonably necessary to aid and protect the interest of small
16 businesses, microbusinesses, employment social enterprises, and
17 disabled veteran business enterprises in contracting with the state.

18 (h) Making efforts to develop, in cooperation with associations
19 representing counties, cities, and special districts, a core statewide
20 small business certification *and employment social enterprise*
21 *certification* application that may be adopted by all participating
22 entities, with any supplemental provisions to be added as necessary
23 by the respective entities.

24 (i) The information furnished by each contractor requesting a
25 small business, microbusiness, or employment social enterprise
26 preference shall be under penalty of perjury.

27 SEC. 8. Section 14839.1 of the Government Code is amended
28 to read:

29 14839.1. (a) The department shall have sole responsibility for
30 certifying and determining the eligibility of small businesses,
31 microbusinesses, and employment social enterprises, under this
32 chapter.

33 (b) Local agencies shall have access to the department's list of
34 certified small businesses *and certified employment social*
35 *enterprises* on the department's Internet Web site, which is
36 available to the public, for use as a reference guide to confirm a
37 small business *or employment social enterprise* certification.

38 SEC. 9. Section 14840 of the Government Code is amended
39 to read:

1 14840. (a) In the process of certifying and determining the
2 eligibility of a disabled veteran business ~~enterprise or enterprise,~~
3 a small business enterprise, including a ~~microbusiness and~~
4 ~~microbusiness, or an~~ employment social enterprise, the department
5 shall require the applicant or certified firm to submit a written
6 declaration, under penalty of perjury, that the information submitted
7 to the department pursuant to this chapter, and in the case of a
8 disabled veteran enterprise all information submitted to the
9 department pursuant to Section 999.2 of the Military and Veterans
10 Code, is true and correct.

11 (b) (1) If the department determines that just cause exists, it
12 may require the owner of the disabled veteran business enterprise,
13 microbusiness, employment social enterprise, or small business,
14 the applicant, or the certified firm to complete and submit to the
15 department a federal Form 4506-T from the Internal Revenue
16 Service, United States Department of the Treasury, requesting a
17 transcript of a tax return.

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

20 (A) The department receives a complaint regarding the certified
21 firm.

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

26 SEC. 10. Section 14842 of the Government Code is amended
27 to read:

28 14842. (a) A business that has obtained classification as a
29 small business, microbusiness, or employment social enterprise,
30 by reason of having furnished incorrect supporting information or
31 by reason of having withheld information, and that knew, or should
32 have known, the information furnished was incorrect or the
33 information withheld was relevant to its request for classification,
34 and that by reason of that classification has been awarded a contract
35 to which it would not otherwise have been entitled, shall do all of
36 the following:

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

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

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

(b) The department shall suspend any person who violates subdivision (a) from transacting any business with the state either directly as a prime contractor or indirectly as a subcontractor, for a period of not less than 3 years and not more than 10 years. State agencies may reject the bid of a supplier offering goods, information technology, or services manufactured or provided by a subcontractor if that subcontractor has been declared ineligible to transact any business with the state under this chapter, even though the bidder is a business in good standing.

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

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

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

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

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

5 (h) For purposes of this section, “awarding state agency” means
6 a state agency or other state governmental entity that awarded the
7 contract, if it was not awarded by the department.

8 SEC. 11. Section 14842.5 of the Government Code is amended
9 to read:

10 14842.5. (a) It shall be unlawful for a person to do any of the
11 following:

12 (1) Knowingly and with intent to defraud, fraudulently obtain,
13 retain, attempt to obtain or retain, or aid another in fraudulently
14 obtaining or retaining or attempting to obtain or retain, certification
15 as a small ~~business or microbusiness~~ *business, microbusiness, or*
16 *employment social* enterprise for the purposes of this chapter.

17 (2) Willfully and knowingly make a false statement with the
18 intent to defraud, whether by affidavit, report, or other
19 representation, to a state official or employee for the purpose of
20 influencing the certification or denial of certification of any entity
21 as a small ~~business or microbusiness~~ *business, microbusiness, or*
22 *employment social* enterprise.

23 (3) Willfully and knowingly obstruct, impede, or attempt to
24 obstruct or impede, any state official or employee who is
25 investigating the qualifications of a business entity that has
26 requested certification as a small ~~business or microbusiness~~
27 *business, microbusiness, or employment social* enterprise.

28 (4) Knowingly and with intent to defraud, fraudulently obtain,
29 attempt to obtain, or aid another person in fraudulently obtaining
30 or attempting to obtain, public moneys, contracts, or funds
31 expended under a contract, that are awarded by any state agency,
32 department, officer, or other state governmental agency, to which
33 the person is not entitled under this chapter.

34 (5) Knowingly and with intent to defraud, fraudulently represent
35 certified small ~~business or microbusiness~~ *business, microbusiness,*
36 *or employment social enterprise* participation in order to obtain
37 or retain a bid preference or a state contract.

38 (6) Knowingly and with intent to defraud, fraudulently represent
39 that a commercially useful function is being performed by a
40 certified small ~~business or microbusiness~~ *business, microbusiness,*

1 *or employment social enterprise* in order to obtain or retain a bid
2 preference or a state contract.

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

8 (8) Willfully and knowingly aid or assist in, or procure, counsel,
9 or advise, the preparation or presentation of a declaration,
10 statement, or other document that is fraudulent or false as to any
11 material matter, regardless of whether that falsity or fraud is
12 committed with the knowledge or consent of the person authorized
13 or required to present the declaration, statement, or document.

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

17 (b) (1) Any person who is found by the department to have
18 violated any of the provisions of subdivision (a) is subject to a
19 civil penalty of not less than ten thousand dollars (\$10,000) nor
20 more than thirty thousand dollars (\$30,000) for the first violation,
21 and a civil penalty of not less than thirty thousand dollars (\$30,000)
22 nor more than fifty thousand dollars (\$50,000) for each additional
23 or subsequent violation.

24 (2) A person who violates any of the provisions of subdivision
25 (a) shall pay all costs incurred by the awarding department and
26 the Department of General Services for any investigations that led
27 to the finding of the violation. Costs incurred shall include, but
28 are not limited to, costs and attorney's fees paid by the awarding
29 state agency or the department related to hearings and court
30 appearances. All payments to the state pursuant to this paragraph
31 shall be deposited in the fund or funds out of which payments on
32 the contract involved were made, except payments to the
33 department shall be deposited in the Service Revolving Fund.

34 (c) The department shall revoke the small business,
35 microbusiness, or employment social enterprise certification, and
36 the disabled veteran business enterprise certification if the business
37 has both certifications, of any person that violates subdivision (a)
38 for a period of not less than five years, and shall, in addition to the
39 penalties provided for in subdivision (b), suspend the person from
40 bidding on, or participating as a contractor, a subcontractor, or a

1 supplier in, any state contract or project for a period of not less
2 than 3 years nor more than 10 years. However, for an additional
3 or subsequent violation, the period of certification revocation or
4 suspension shall be extended for a period of up to three years. The
5 certification revocation shall apply to the principals of the business
6 and any subsequent businesses formed by one or more of those
7 principals. Any business or person who fails to satisfy any of the
8 penalties imposed pursuant to paragraphs (1) and (2) of subdivision
9 (b) shall be prohibited from further contracting with the state until
10 the penalties are satisfied.

11 (d) If a contractor, subcontractor, supplier, subsidiary, or affiliate
12 thereof, has been found by the department to have violated
13 subdivision (a) and that violation occurred within three years of
14 another violation of subdivision (a) found by the department, the
15 department shall prohibit that contractor, subcontractor, supplier,
16 subsidiary, or affiliate thereof, from entering into a state project
17 or state contract and from further bidding to a state entity, and
18 from being a subcontractor to a contractor for a state entity, and
19 from being a supplier to a state entity.

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

40 (2) For purposes of this section:

1 (A) “Awarding state agency” means any state agency,
2 department, governmental entity, or other officer or entity
3 empowered by law to enter into contracts on behalf of the State
4 of California.

5 (B) “Contractor” means any person or persons, firm, partnership,
6 corporation, or combination thereof who submits a bid and enters
7 into a contract with a representative of a state agency, department,
8 governmental entity, or other officer empowered by law to enter
9 into contracts on behalf of the State of California.