

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 4, 2016

**SENATE BILL**

**No. 1219**

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**Introduced by Senator Hancock**  
**(Coauthors: Senators Hall and Hueso)**  
(Coauthor: Assembly Member Jones-Sawyer)

February 18, 2016

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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 of 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 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 Services and prescribes duties for the office, which include maintaining a bidders list of small businesses and disabled veteran

businesses and noting which small businesses also qualify as 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~~ *would, on and after July 1, 2017, 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 business dedicated to hiring and assisting individuals who face significant barriers to employment and at least 51% of the business' employees have these barriers. for-profit business or nonprofit business that earns a majority of its enterprise revenue from the production of goods and services, and that demonstrates evidence in its articles of incorporation or bylaws of its mission to provide employment with on-the-job and life skills training to a direct labor force that is comprised of a majority of individuals who face significant barriers to employment. The bill would define "individuals who face significant barriers to employment" to include individuals who have been incarcerated, recently have been released from a federal, state, or local correctional facility or who have a criminal record or history, individuals who are, or have been, homeless, and youth and young adults disconnected from school or work, and individuals with disabilities, including, but not limited to, substance addiction or mental illness. between 16 and 24 years of age, inclusive, who lack a high school diploma, are not enrolled in school, and are unemployed.*

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, and
- 9 employment social enterprises that provide jobs for individuals

1 who have experienced significant barriers to employment, such as  
2 incarceration, homelessness, disability, and youth disconnected  
3 from school and work.

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

11 SEC. 2. Section 14837 of the Government Code is amended  
12 to read:

13 14837. As used in this chapter:

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

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

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

18 (1) It is primarily engaged in the chemical or mechanical  
19 transformation of raw materials or processed substances into new  
20 products.

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

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

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

36 ~~(3) “Employment social enterprise” is a nonprofit or for-profit~~  
37 ~~business dedicated to hiring and assisting individuals who face~~  
38 ~~significant barriers to employment and at least 51 percent of the~~  
39 ~~business’ employees have these barriers. “Individuals who face~~  
40 ~~significant barriers to employment” include, but are not limited~~

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

5 (3) *“Employment social enterprise” is a for-profit business or*  
6 *nonprofit business that earns a majority of its enterprise revenue*  
7 *from the production of goods and services and that demonstrates*  
8 *evidence in its articles of incorporation, bylaws, or both, of its*  
9 *mission to provide employment with on-the-job and life skills*  
10 *training to a direct labor force that is comprised of a majority of*  
11 *individuals who face significant barriers to employment.*  
12 *“Individuals who face significant barriers to employment” are*  
13 *defined as one or more of the following:*

14 (A) *Individuals who have recently been released from a federal,*  
15 *state, or local correctional facility, or a person who, while not*  
16 *recently incarcerated, has a criminal record or history.*

17 (B) *Individuals who are, or have been, homeless, as defined by*  
18 *the United States Department of Health and Human Services as*  
19 *of January 1, 2016.*

20 (C) *Youth and young adults between 16 and 24 years of age,*  
21 *inclusive, who lack a high school diploma, are not enrolled in*  
22 *school, and are unemployed.*

23 (4) The director shall conduct a biennial review of the average  
24 annual gross receipt levels specified in this subdivision for small  
25 business and microbusiness and may adjust that level to reflect  
26 changes in the California Consumer Price Index for all items. To  
27 reflect unique variations or characteristics of different industries,  
28 the director may establish, to the extent necessary, either higher  
29 or lower qualifying standards than those specified in this  
30 subdivision, or alternative standards based on other applicable  
31 criteria.

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

1 (A) A certified small business, microbusiness, or employment  
2 social enterprise is deemed to perform a commercially useful  
3 function if the business does all of the following:

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

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

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

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

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

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

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

28 (f) *The amendments made to this section by the act adding this*  
29 *subdivision shall become operative on July 1, 2017.*

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

32 14838. In order to facilitate the participation of small business,  
33 including microbusiness and employment social enterprise, in the  
34 provision of goods, information technology, and services to the  
35 state, and in the construction (including alteration, demolition,  
36 repair, or improvement) of state facilities, the directors of the  
37 department and other state agencies that enter those contracts, each  
38 within their respective areas of responsibility, shall do all of the  
39 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, 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, determined according to rules and regulations established by the Department of General Services.

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

1 maximum preference cost shall be applied, to the extent possible,  
2 so as to maximize the dollar participation of small businesses,  
3 including microbusinesses, and employment social enterprises in  
4 the contract award.

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

7 (1) Reducing the experience required.

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

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

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

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

1     (g) *The amendments made to this section by the act adding this*  
2     *subdivision shall become operative on July 1, 2017.*

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

5     14838.5. (a) Notwithstanding the advertising, bidding, and  
6     protest provisions of Chapter 6 (commencing with Section 14825)  
7     of this part and Chapter 2 (commencing with Section 10290) and  
8     Chapter 3 (commencing with Section 12100) of Part 2 of Division  
9     2 of the Public Contract Code, a state agency may award a contract  
10    for the acquisition of goods, services, or information technology  
11    that has an estimated value of greater than five thousand dollars  
12    (\$5,000), but less than two hundred fifty thousand dollars  
13    (\$250,000), to a certified small business, including a microbusiness,  
14    or to an employment social enterprise, or to a disabled veteran  
15    business enterprise, as long as the agency obtains price quotations  
16    from two or more certified small businesses, including  
17    microbusinesses, or from two or more employment social  
18    enterprises, or from two or more disabled veteran business  
19    enterprises.

20    (b) In carrying out subdivision (a), a state agency shall consider  
21    a responsive offer timely received from a responsible certified  
22    small business, including a microbusiness, or from an employment  
23    social enterprise, or from a disabled veteran business enterprise.

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

31    (d) *The amendments made to this section by the act adding this*  
32    *subdivision shall become operative on July 1, 2017.*

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

35    14838.64. (a) Notwithstanding any other law, including, but  
36    not limited to, the advertising, bidding, and protest provisions of  
37    Chapter 6 (commencing with Section 14825) of this part and  
38    Chapter 2.5 (commencing with Section 10700) and Chapter 3  
39    (commencing with Section 12100) of Part 2 of Division 2 of the  
40    Public Contract Code, the California State University may award



1 a contract for the acquisition of goods, services, or information  
2 technology that has an estimated value of greater than five thousand  
3 dollars (\$5,000), but less than two hundred fifty thousand dollars  
4 (\$250,000), to a certified small business, including a microbusiness,  
5 or to an employment social enterprise, or to a disabled veteran  
6 business enterprise, if the California State University obtains price  
7 quotations from two or more certified small businesses, including  
8 microbusinesses, or from two or more employment social  
9 enterprises, or from two or more disabled veteran business  
10 enterprises.

11 (b) In carrying out subdivision (a), the California State  
12 University shall consider a responsive offer timely received from  
13 a responsible certified small business, including a microbusiness,  
14 or from an employment social enterprise, or from a disabled veteran  
15 business enterprise.

16 (c) *The amendments made to this section by the act adding this*  
17 *subdivision shall become operative on July 1, 2017.*

18 SEC. 6. Section 14838.7 of the Government Code is amended  
19 to read:

20 14838.7. (a) Notwithstanding the advertising and bidding  
21 provisions of Chapter 6 (commencing with Section 14825) of this  
22 code and Chapter 1 (commencing with Section 10100) of Part 2  
23 of Division 2 of the Public Contract Code, a state agency may  
24 award a contract for construction, including the erection,  
25 construction, alteration, repair, or improvement of any state  
26 structure, building, road, or other state improvement of any kind  
27 that has an estimated value of greater than five thousand dollars  
28 (\$5,000) but less than the cost limit, as specified in subdivision  
29 (b) of Section 10105 of the Public Contract Code, to a certified  
30 small business, including a microbusiness, or to an employment  
31 social enterprise, or to a disabled veteran business enterprise, as  
32 long as the agency obtains written bid submittals from two or more  
33 certified small businesses, including microbusinesses, or from two  
34 or more employment social enterprises, or from two or more  
35 disabled veteran business enterprises.

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

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

6 (d) *The amendments made to this section by the act adding this*  
7 *subdivision shall become operative on July 1, 2017.*

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

10 14839. There is hereby established within the department the  
11 Office of Small Business and Disabled Veteran Business Enterprise  
12 Services. The duties of the office shall include:

13 (a) Compiling and maintaining a comprehensive bidders list of  
14 qualified small businesses, employment social enterprises, and  
15 disabled veteran business enterprises, and noting which small  
16 businesses also qualify as microbusinesses.

17 (b) Coordinating with the ~~Federal~~ *federal* Small Business  
18 Administration, the Minority Business Development Agency, and  
19 the Office of Small Business Development of the Department of  
20 Economic and Business Development.

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

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

28 (e) Working with appropriate state, federal, local, and private  
29 organizations and business enterprises in disseminating information  
30 on bidding procedures and opportunities available to small  
31 businesses, microbusinesses, employment social enterprises, and  
32 disabled veteran business enterprises.

33 (f) Making recommendations to the department and other state  
34 agencies for simplification of specifications and terms in order to  
35 increase the opportunities for small business, microbusiness,  
36 employment social enterprises, and disabled veteran business  
37 enterprise participation.

38 (g) Developing, by regulation, other programs and practices  
39 that are reasonably necessary to aid and protect the interest of small

1 businesses, microbusinesses, employment social enterprises, and  
2 disabled veteran business enterprises in contracting with the state.

3 (h) Making efforts to develop, in cooperation with associations  
4 representing counties, cities, and special districts, a core statewide  
5 small business certification and employment social enterprise  
6 certification application that may be adopted by all participating  
7 entities, with any supplemental provisions to be added as necessary  
8 by the respective entities.

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

12 (j) *The amendments made to this section by the act adding this*  
13 *subdivision shall become operative on July 1, 2017.*

14 SEC. 8. Section 14839.1 of the Government Code is amended  
15 to read:

16 14839.1. (a) The department shall have sole responsibility for  
17 certifying and determining the eligibility of small businesses,  
18 microbusinesses, and employment social ~~enterprises~~, *enterprises*  
19 under this chapter.

20 (b) Local agencies shall have access to the department's list of  
21 certified small businesses and certified employment social  
22 enterprises on the department's Internet Web site, which is  
23 available to the public, for use as a reference guide to confirm a  
24 small business or employment social enterprise certification.

25 (c) *The amendments made to this section by the act adding this*  
26 *subdivision shall become operative on July 1, 2017.*

27 SEC. 9. Section 14840 of the Government Code is amended  
28 to read:

29 14840. (a) In the process of certifying and determining the  
30 eligibility of a disabled veteran business enterprise, a small business  
31 enterprise, including a microbusiness, or an employment social  
32 enterprise, the department shall require the applicant or certified  
33 firm to submit a written declaration, under penalty of perjury, that  
34 the information submitted to the department pursuant to this  
35 chapter, and in the case of a disabled veteran enterprise all  
36 information submitted to the department pursuant to Section 999.2  
37 of the Military and Veterans Code, is true and correct.

38 (b) (1) If the department determines that just cause exists, it  
39 may require the owner of the disabled veteran business enterprise,  
40 microbusiness, employment social enterprise, or small business,

1 the applicant, or the certified firm to complete and submit to the  
2 department a federal Form 4506-T *or Form 990* from the Internal  
3 Revenue Service, United States Department of the Treasury,  
4 requesting a transcript of a tax return.

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

7 (A) The department receives a complaint regarding the certified  
8 firm.

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

13 *(c) The amendments made to this section by the act adding this*  
14 *subdivision shall become operative on July 1, 2017.*

15 SEC. 10. Section 14842 of the Government Code is amended  
16 to read:

17 14842. (a) A business that has obtained classification as a  
18 small business, microbusiness, or employment social-enterprise,  
19 *enterprise* by reason of having furnished incorrect supporting  
20 information or by reason of having withheld information, and that  
21 knew, or should have known, the information furnished was  
22 incorrect or the information withheld was relevant to its request  
23 for classification, and that by reason of that classification has been  
24 awarded a contract to which it would not otherwise have been  
25 entitled, shall do all of the following:

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

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

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

39 (b) The department shall suspend any person who violates  
40 subdivision (a) from transacting any business with the state either

1 directly as a prime contractor or indirectly as a subcontractor, for  
2 a period of not less than 3 years and not more than 10 years. State  
3 agencies may reject the bid of a supplier offering goods,  
4 information technology, or services manufactured or provided by  
5 a subcontractor if that subcontractor has been declared ineligible  
6 to transact any business with the state under this chapter, even  
7 though the bidder is a business in good standing.

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

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

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

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

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

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

36 (i) *The amendments made to this section by the act adding this*  
37 *subdivision shall become operative on July 1, 2017.*

38 SEC. 11. Section 14842.5 of the Government Code is amended  
39 to read:

1 14842.5. (a) It shall be unlawful for a person to do any of the  
2 following:

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

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

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

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

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

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

39 (8) Willfully and knowingly aid or assist in, or procure, counsel,  
40 or advise, the preparation or presentation of a declaration,

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

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

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

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

25 (c) The department shall revoke the small business,  
26 microbusiness, or employment social enterprise certification, and  
27 the disabled veteran business enterprise certification if the business  
28 has both certifications, of any person that violates subdivision (a)  
29 for a period of not less than five years, and shall, in addition to the  
30 penalties provided for in subdivision (b), suspend the person from  
31 bidding on, or participating as a contractor, a subcontractor, or a  
32 supplier in, any state contract or project for a period of not less  
33 than 3 years nor more than 10 years. However, for an additional  
34 or subsequent violation, the period of certification revocation or  
35 suspension shall be extended for a period of up to three years. The  
36 certification revocation shall apply to the principals of the business  
37 and any subsequent businesses formed by one or more of those  
38 principals. Any business or person who fails to satisfy any of the  
39 penalties imposed pursuant to paragraphs (1) and (2) of subdivision

(b) shall be prohibited from further contracting with the state until the penalties are satisfied.

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

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

(2) For purposes of this section:

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

(B) “Contractor” means any person or persons, firm, partnership, corporation, or combination thereof who submits a bid and enters 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.
- 3 (f) *The amendments made to this section by the act adding this*
- 4 *subdivision shall become operative on July 1, 2017.*

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