

AMENDED IN ASSEMBLY AUGUST 15, 2016

AMENDED IN ASSEMBLY AUGUST 1, 2016

AMENDED IN ASSEMBLY JUNE 30, 2016

AMENDED IN SENATE MAY 31, 2016

AMENDED IN SENATE APRIL 4, 2016

SENATE BILL

No. 1219

Introduced by Senator Hancock

(Coauthors: Senators Hall and Hueso)

(Coauthors: Assembly Members Brown, Eduardo Garcia, Gipson,
Gonzalez, and 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, and to amend Section 10111 of the Public Contract 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. Existing law requires the Department of General Services to make available a report on contracting activity.

This bill would, on and after ~~July 1, 2017~~, *October 1, 2018*, grant an employment social enterprise a preference and status similar to a small business or microbusiness as described above. The bill would define an employment social enterprise as a California-based social purpose corporation, a benefit corporation, or a nonprofit corporation that earns 51% or more of its enterprise revenue from the production or assembly of goods or the provision of 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 80% or more of enterprise participants who face multiple barriers to employment. The bill would define an “enterprise participant who faces multiple barriers to employment” as an individual that meets certain criteria, including that he or she has employment barriers, is or was homeless, or is an out-of-school youth, as specified. The bill would require the above-described report by the department to include information relating to the level of participation of employment social enterprises in state contracting. The bill would require specified documents and facts to be certified under penalty of perjury. By expanding the crime of perjury, this bill would impose a state-mandated local program.

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

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

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

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

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Unrelenting unemployment and deepening poverty are a
4 reality for many Californians. According to the United States
5 Census Bureau, California's poverty rate is 16.4 percent as
6 compared to a national rate of 15.6 percent. It is estimated that
7 nearly a quarter of California's children, 22.7 percent, are living
8 in households with annual incomes below the federal poverty line.
9 A significant contributing factor to these poverty rates are the
10 education and basic skill deficit of many Californians from rural
11 and inner-city areas, historically underserved population groups,
12 and those who are more recently encountering employment
13 challenges, including the formerly incarcerated and the homeless.
14 Without comprehensive, thoughtful, and strategic intervention,
15 the economic disparity within the state will only increase.

16 (b) Smaller-sized businesses and social enterprises can function
17 as economic engines. The social enterprise model uses
18 entrepreneurial activity to pursue a social purpose. Social
19 enterprises advance the social mission through market-based
20 strategies and may be structured as independent for-profit
21 businesses, nonprofit ventures, or a business unit or division within
22 a larger nonprofit organization. Small businesses and social
23 enterprises are expected to become increasingly important due to
24 their ability to be more flexible and better suited to meet niche
25 market needs and respond to the necessities of vulnerable
26 communities. However, their small to medium size and double
27 bottom line mission also entail challenges when meeting regulatory
28 requirements, accessing capital, competing for large-size contracts,
29 and marketing their goods and services.

30 (c) California is home to a dynamic and growing sector of social
31 enterprises. According to the national Social Enterprise Alliance,
32 there are 98 social enterprises from California registered in its
33 database. The San Francisco chapter was founded in 2009 and the
34 Los Angeles chapter was founded in 2010. In 2015, 80
35 California-based employment social enterprises, from startups to

1 mature businesses, competed in a national grant solicitation for
2 the Social Innovation Fund/REDF. Eight were awarded funding
3 and are projected to generate up to 14,000 job opportunities and
4 over \$375 million in revenues between 2016 and 2020. In the
5 Four-Year County Small Business and Social Enterprise Utilization
6 Plan of Los Angeles County, prepared in May 2016, 19 social
7 enterprises meet the Transitional Jobs Opportunity Preference
8 serving the county's workforce. Although this is still a very young
9 sector, a recent report by Mathematica Policy Research found that
10 for every dollar spent by a social enterprise, there was a \$2.23
11 return on investment to society. This includes benefits to taxpayers,
12 including reductions in government transfers, incarceration, and
13 health and housing costs paid for by the public sector. Furthermore,
14 the study also showed that the percentage of total income from
15 government transfers decreased from 71 percent to 24 percent and
16 the total monthly income for workers increased by 91 percent.
17 This study concludes that investing in the growth of social
18 enterprises, as well as their additional support services for workers,
19 can have a positive impact on people's lives, while lessening the
20 burden on government resources.

21 (d) (1) In major economies like those in the United Kingdom
22 and Australia, social enterprise is a mature sector. United Kingdom
23 government statistics identify around 70,000 social enterprises
24 contributing £24 billion to the economy and employing nearly a
25 million people. According to the Social Enterprise Survey for
26 2015, 50 percent of social enterprises reported a profit, 73 percent
27 of social enterprises earn more than 75 percent of their income
28 from trade, and 27 percent of social enterprises have the public
29 sector as their main source of income. Furthermore, 59 percent of
30 social enterprises employ at least one person who is disadvantaged
31 in the labor market, and for 16 percent of social enterprises, this
32 group forms at least half of all employees.

33 (2) Another recent study, by Social Ventures in Australia, found
34 that social enterprises have demonstrated that they can create jobs
35 for people excluded from the mainstream workforce, particularly
36 the long-term unemployed, and showed that this equity outcome
37 is also efficient, as government investment in the creation of
38 businesses is returned via taxation revenue and savings in social
39 security expenditure. In developing economies of Latin America,
40 Asia, and sub-Saharan Africa, social entrepreneurs are creating

enterprises that help solve social problems in their countries with a reduced reliance on government or international aid to finance it.

(e) (1) Under the social enterprise umbrella, there are mission-driven businesses known as employment social enterprises (ESE) which are dedicated to hiring and assisting people who face barriers to employment. They combine commercial activities—producing, manufacturing, and distributing products and services—with a transitional job that has supportive management and assistance to foster the success of people who want to work but are often not given the opportunity by mainstream employers. ESEs combine market wage-paying transitional jobs while providing essential job readiness services that help participants develop appropriate work habits and basic skills, build real work experience, and manage life issues. A 2015 California study, the Mathematica Jobs Study, showed that the percentage of people who had a job six to 12 months after their ESE position was 20 points higher than people who received only traditional workforce training support.

(2) Due to the ESE social mission, the cost of doing business includes on-the-job workforce and employment training for a labor force that is largely comprised of participants with significant barriers to employment. In the nonprofit sector, business profits are reinvested into the business to support training and grow more jobs. It is also common for businesses to leverage other public and private resources to support the additional cost of workforce training.

(f) ESEs consist of the following elements:

(1) Small and medium-size nonprofit or for-profit businesses that sell goods or services.

(2) A mission to employ low-income people with multiple barriers to employment.

(3) Short- or long-term wage-paying employment that combines real work, training and skill development, and supportive services for participants who are overcoming barriers to employment.

(g) Elements of participant training and supportive services may include one or more of the following:

(1) Experience with workplace norms and general behaviors that facilitate success in any work environment and on-the-job training.

1 (2) Worksite supervision which includes feedback on
2 performance and coaching to help participants become work ready
3 and transition to traditional, unsupported employment.

4 (3) Linking participants to services that can help them stabilize
5 their lives, avoid relapse of behaviors such as drug abuse or
6 criminal activity, and obtain life supports related to needs such as
7 child care or housing.

8 (4) Job search and retention services which includes assistance
9 with resumes and cover letters, interview preparation, and job
10 searches.

11 (5) Job development and placement services to identify job
12 openings, schedule interviews, and follow up with employers after
13 a participant has an interview.

14 (6) Promote and support the completion of industry-recognized
15 certificates.

16 (7) Connections and enrollment support to community colleges,
17 educational institutions, vocational training and certificate
18 programs, preapprenticeship and apprenticeship programs, or other
19 opportunities to pursue career and education advancement.

20 SEC. 2. Section 14836 of the Government Code is amended
21 to read:

22 14836. (a) The Legislature hereby declares that it serves a
23 public purpose, and it is of benefit to the state, to promote and
24 facilitate the fullest possible participation by all citizens in the
25 affairs of the State of California in every possible way. It is also
26 essential that opportunity is provided for full participation in our
27 free enterprise system by small business enterprises, and
28 employment social enterprises.

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

36 SEC. 3. Section 14837 of the Government Code is amended
37 to read:

38 14837. As used in this chapter:

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

40 (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” means an entity that meets
22 all of the following:

23 (A) Is organized as a social purpose corporation, a benefit
24 corporation, or a nonprofit corporation.

25 (B) Is a California-based entity that meets one or more of the
26 following:

27 (i) The entity has a principal office in California, and the officers
28 are domiciled in California.

29 (ii) The entity has a major office or manufacturing facility
30 located in California that has been licensed by the state on a
31 continuous basis to conduct business within the state and has
32 continuously employed California residents for work within the
33 state during the prior three years.

34 (iii) The entity is a nonprofit organization incorporated in
35 another state that has sponsored or co-sponsored substantive
36 economic and workforce development activities within this state
37 and has provided services to individuals who face multiple barriers
38 to employment in at least 20 of the prior 24 months.

1 (C) Earns 51 percent or more of its enterprise revenue from the
2 production or assembly of goods or the provision of services, or
3 a combination of both.

4 (D) Demonstrates evidence in its articles of incorporation,
5 bylaws, or both, of the employment social enterprise's mission to
6 provide employment with on-the-job and life skills training to a
7 direct labor force, not including supervisors and administration,
8 that is comprised of at least 80 percent of enterprise participants
9 who face multiple barriers to employment. To document on-the-job
10 and life skills training, an employment social enterprise shall
11 provide documentation, under penalty of perjury, that one or more
12 of the following services is being offered to individuals who face
13 multiple barriers to employment:

14 (i) Basic skills and job readiness assessment.

15 (ii) Referral system to industry-recognized certificates and
16 training.

17 (iii) Linkage to community colleges, adult schools, or other
18 education institutions to gain an education diploma or certificate.

19 (iv) Partnership with local or regional workforce development
20 boards.

21 (v) Job placement and retention services.

22 (E) (i) Has two or more enterprise participants who face
23 multiple barriers to employment.

24 (ii) "Enterprise participant who faces multiple barriers to
25 employment" means an individual that meets two or more of the
26 following:

27 (I) Is an individual with employment barriers, as defined in
28 subdivision (j) of Section 14005 of the Unemployment Insurance
29 Code.

30 (II) Is or has been homeless, as defined by the United States
31 Department of Health and Human Services as of January 1, 2016.

32 (III) Is an out-of-school youth. "Out-of-school youth" means
33 an individual who meets the definition in Section 3164(a)(1)(B)
34 of Title 29 of the United States Code.

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

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

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

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

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

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

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

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

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

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

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

(f) The amendments made to this section by the act adding this subdivision shall become operative on ~~July 1, 2017~~. *October 1, 2018*.

SEC. 4. 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, 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 a small business or employment social enterprise 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

1 provide for small business, microbusiness, or employment social
2 enterprise subcontractor participation shall be up to a maximum
3 5 percent of the highest responsible bidder's total score, determined
4 according to rules and regulations established by the Department
5 of General Services.

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

9 (4) The preference under paragraph (1) shall not exceed fifty
10 thousand dollars (\$50,000) for any bid, and the combined cost of
11 preferences granted pursuant to paragraph (1) and any other
12 provision of law shall not exceed one hundred thousand dollars
13 (\$100,000). In bids in which the state has reserved the right to
14 make multiple awards, this fifty thousand dollar (\$50,000)
15 maximum preference cost shall be applied, to the extent possible,
16 so as to maximize the dollar participation of small businesses,
17 including microbusinesses, and employment social enterprises in
18 the contract award.

19 (5) A bidder may be awarded a preference for both of the
20 following in a single bid:

21 (A) A small business preference or a nonsmall business
22 preference for bidders that provide for small business or
23 microbusiness subcontractor participation.

24 (B) An employment social enterprise preference or a nonsmall
25 business preference for bidders that provide for employment social
26 enterprise subcontractor participation.

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

29 (1) Reducing the experience required.

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

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

34 (e) Under the authorization granted in Section 10163 of the
35 Public Contract Code, make awards, whenever feasible, to small
36 business, microbusiness, and employment social enterprise bidders
37 for each project bid upon within their prequalification rating. This
38 may be accomplished by dividing major projects into subprojects
39 so as to allow a small business, microbusiness, or employment
40 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).

(g) In order to qualify for the incentives under this section, an employment social enterprise shall demonstrate and certify under penalty of perjury the following:

(1) Not less than 70 percent of the total labor hours, excluding supervisors and administration, required to perform the information technology or construction ~~contract~~ *contract* shall be completed by an enterprise participant who faces multiple barriers to employment.

(2) Not less than 70 percent of the total labor hours, excluding supervisors and administration, required to manufacture the goods and perform the contract shall be completed by an enterprise participant who faces multiple barriers to employment. For an employment social enterprise with 25 or fewer total employees, 50 percent of the total labor hours, excluding supervisors and administration, required to manufacture the goods and perform the contract shall be completed by an enterprise participant who faces multiple barriers to employment.

(3) Not less than 80 percent of the total labor hours, excluding supervisors and administration, required to provide services and

1 perform the contract shall be completed by an enterprise participant
2 who faces multiple barriers to employment.

3 (h) The amendments made to this section by the act adding this
4 subdivision shall become operative on ~~July 1, 2017~~. *October 1,*
5 *2018.*

6 SEC. 5. Section 14838.5 of the Government Code is amended
7 to read:

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

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

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

34 (d) The amendments made to this section by the act adding this
35 subdivision shall become operative on ~~July 1, 2017~~. *October 1,*
36 *2018.*

37 SEC. 6. Section 14838.64 of the Government Code is amended
38 to read:

39 14838.64. (a) Notwithstanding any other law, including, but
40 not limited to, the advertising, bidding, and protest provisions of

Chapter 6 (commencing with Section 14825) of this part and Chapter 2.5 (commencing with Section 10700) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, the California State University 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 to an employment social enterprise, or to a disabled veteran business enterprise, if the California State University obtains price quotations from two or more certified small businesses, including microbusinesses, or from two or more employment social enterprises, or from two or more disabled veteran business enterprises.

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

(c) The amendments made to this section by the act adding this subdivision shall become operative on ~~July 1, 2017~~. *October 1, 2018*.

SEC. 7. Section 14838.7 of the Government Code is amended to read:

14838.7. (a) Notwithstanding the advertising and bidding provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for construction, including the erection, construction, alteration, repair, or improvement of any state structure, building, road, or other state improvement of any kind that has an estimated value of greater than five thousand dollars (\$5,000) but less than the cost limit, as specified in subdivision (b) of Section 10105 of the Public Contract Code, to a certified small business, including a microbusiness, or to an 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, or from two or more 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, or from an 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.

(d) The amendments made to this section by the act adding this subdivision shall become operative on ~~July 1, 2017~~. *October 1, 2018*.

SEC. 8. 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, employment social enterprises, and disabled veteran business enterprises, and noting which small businesses also qualify as microbusinesses.

(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 businesses, microbusinesses, employment social enterprises, and disabled veteran business enterprises.

(f) Making recommendations to the department and other state agencies for simplification of specifications and terms in order to increase the opportunities for small business, microbusiness,

1 employment social enterprises, and disabled veteran business
2 enterprise participation.

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

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

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

16 (j) The amendments made to this section by the act adding this
17 subdivision shall become operative on ~~July 1, 2017~~. *October 1,*
18 *2018.*

19 SEC. 9. Section 14839.1 of the Government Code is amended
20 to read:

21 14839.1. (a) The department shall have sole responsibility,
22 except as provided for in subdivision (c), for certifying and
23 determining the eligibility of small businesses, microbusinesses,
24 and employment social enterprises under this chapter.

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

30 (c) The department may assign all or portions of the certification
31 process, the determination of eligibility, or the auditing of
32 compliance with the articles of incorporation and the bylaws of
33 employment social enterprises to another state entity or local entity.

34 (d) The amendments made to this section by the act adding this
35 subdivision shall become operative on ~~July 1, 2017~~. *October 1,*
36 *2018.*

37 SEC. 10. Section 14840 of the Government Code is amended
38 to read:

39 14840. (a) In the process of certifying and determining the
40 eligibility of a disabled veteran business enterprise, a small business

1 enterprise, including a microbusiness, or an employment social
2 enterprise, the department shall require the applicant or certified
3 firm to submit a written declaration, under penalty of perjury, that
4 the information submitted to the department pursuant to this
5 chapter, and in the case of a disabled veteran enterprise all
6 information submitted to the department pursuant to Section 999.2
7 of the Military and Veterans Code, is true and correct.

8 (b) (1) If the department determines that just cause exists, it
9 may require the owner of the disabled veteran business enterprise,
10 microbusiness, employment social enterprise, or small business,
11 the applicant, or the certified firm to complete and submit to the
12 department a federal Form 4506-T or Form 990 from the Internal
13 Revenue Service, United States Department of the Treasury,
14 requesting a transcript of a tax return. For an employment social
15 enterprise, the department may require documentation that the
16 employment social enterprise is operating in a manner consistent
17 with its articles of incorporation or bylaws.

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 (c) The amendments made to this section by the act adding this
27 subdivision shall become operative on ~~July 1, 2017~~. *October 1,*
28 *2018.*

29 SEC. 11. Section 14842 of the Government Code is amended
30 to read:

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

1 (1) Pay to the state any difference between the contract amount
2 and what the state's costs would have been if the contract had been
3 properly awarded.

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

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

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

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

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

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

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

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

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

12 (i) The amendments made to this section by the act adding this
13 subdivision shall become operative on ~~July 1, 2017~~. *October 1,*
14 *2018.*

15 SEC. 12. Section 14842.5 of the Government Code is amended
16 to read:

17 14842.5. (a) It shall be unlawful for a person to do any of the
18 following:

19 (1) Knowingly and with intent to defraud, fraudulently obtain,
20 retain, attempt to obtain or retain, or aid another in fraudulently
21 obtaining or retaining or attempting to obtain or retain, certification
22 as a small business, microbusiness, or employment social enterprise
23 for the purposes of this chapter.

24 (2) Willfully and knowingly make a false statement with the
25 intent to defraud, whether by affidavit, report, or other
26 representation, to a state official or employee for the purpose of
27 influencing the certification or denial of certification of any entity
28 as a small business, microbusiness, or employment social
29 enterprise.

30 (3) Willfully and knowingly obstruct, impede, or attempt to
31 obstruct or impede, any state official or employee who is
32 investigating the qualifications of a business entity that has
33 requested certification as a small business, microbusiness, or
34 employment social enterprise.

35 (4) Knowingly and with intent to defraud, fraudulently obtain,
36 attempt to obtain, or aid another person in fraudulently obtaining
37 or attempting to obtain, public moneys, contracts, or funds
38 expended under a contract, that are awarded by any state agency,
39 department, officer, or other state governmental agency, to which
40 the person is not entitled under this chapter.

1 (5) Knowingly and with intent to defraud, fraudulently represent
2 certified small business, microbusiness, or employment social
3 enterprise participation in order to obtain or retain a bid preference
4 or a state contract.

5 (6) Knowingly and with intent to defraud, fraudulently represent
6 that a commercially useful function is being performed by a
7 certified small business, microbusiness, or employment social
8 enterprise in order to obtain or retain a bid preference or a state
9 contract.

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

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

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

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

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

1 (c) The department shall revoke the small business,
2 microbusiness, or employment social enterprise certification, and
3 the disabled veteran business enterprise certification if the business
4 has both certifications, of any person that violates subdivision (a)
5 for a period of not less than five years, and shall, in addition to the
6 penalties provided for in subdivision (b), suspend the person from
7 bidding on, or participating as a contractor, a subcontractor, or a
8 supplier in, any state contract or project for a period of not less
9 than 3 years nor more than 10 years. However, for an additional
10 or subsequent violation, the period of certification revocation or
11 suspension shall be extended for a period of up to three years. The
12 certification revocation shall apply to the principals of the business
13 and any subsequent businesses formed by one or more of those
14 principals. Any business or person who fails to satisfy any of the
15 penalties imposed pursuant to paragraphs (1) and (2) of subdivision
16 (b) shall be prohibited from further contracting with the state until
17 the penalties are satisfied.

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

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

1 due to the contractor or a reduction reflected in the claim schedule
2 submitted to the Controller, to the extent that the Controller is
3 making payments to the contractor on behalf of any state agency,
4 the Controller shall set off penalties and costs due against any
5 invoices due to the contractor from any other contract awarded to
6 the contractor.

7 (2) For purposes of this section:

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

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

17 (f) The amendments made to this section by the act adding this
18 subdivision shall become operative on ~~July 1, 2017~~. *October 1,*
19 *2018.*

20 SEC. 13. Section 10111 of the Public Contract Code is amended
21 to read:

22 10111. Commencing January 1, 2007, the department shall
23 make available a report on contracting activity containing the
24 following information:

25 (a) A listing of consulting services contracts that the state has
26 entered into during the previous fiscal year. The listing shall
27 include the following:

28 (1) The name and identification number of each contractor.

29 (2) The type of bidding entered into, the number of bidders,
30 whether the low bidder was accepted, and if the low bidder was
31 not accepted, an explanation of why another contractor was
32 selected.

33 (3) The amount of the contract price.

34 (4) Whether the contract was a noncompetitive bid contract,
35 and why the contract was a noncompetitive bid contract.

36 (5) Justification for entering into each consulting services
37 contract.

38 (6) The purpose of the contract and the potential beneficiaries.

39 (7) The date when the initial contract was signed, and the date
40 when the work began and was completed.

1 (b) The report shall also include a separate listing of consultant
2 contracts completed during that fiscal year, with the same
3 information specified in subdivision (a).

4 (c) The information specified in subdivisions (a) and (b) shall
5 also include a list of any contracts underway during that fiscal year
6 on which a change was made regarding the following:

7 (1) The completion date of the contract.

8 (2) The amount of money to be received by the contractor, if it
9 exceeds 3 percent of the original contract price.

10 (3) The purpose of the contract or duties of the contractor. A
11 brief explanation shall be given if the change in purpose is
12 significant.

13 (d) The level of participation, by agency, of disabled veteran
14 business enterprises in statewide contracting and shall include
15 dollar values of contract award for the following categories:

16 (1) Construction.

17 (2) Architectural, engineering, and other professional services.

18 (3) Procurement of materials, supplies, and equipment.

19 (4) Information technology procurements.

20 Additionally, the report shall include a statistical summary
21 detailing each awarding department's goal achievement and a
22 statewide total of those goals.

23 (e) The level of participation by small business in state
24 contracting including:

25 (1) Upon request, an up-to-date list of eligible small business
26 bidders by general procurement and construction contract
27 categories, noting company names and addresses and also noting
28 which small businesses also qualify as microbusinesses.

29 (2) By general procurement and construction contract categories,
30 statistics comparing the small business and microbusiness contract
31 participation dollars to the total state contract participation dollars.

32 (3) By awarding department and general procurement and
33 construction categories, statistics comparing the small business
34 and microbusiness contract participation dollars to the total state
35 contract participation dollars.

36 (4) Any recommendations for changes in statutes or state
37 policies to improve opportunities for small businesses and
38 microbusinesses.

39 (5) A statistical summary of small businesses and
40 microbusinesses certified for state contracting by the number of

1 employees at the business for each of the following categories:
2 0–5, 26–50, 51–75, and 76–100.

3 (6) To the extent feasible, beginning in the year 2008, the
4 number of contracts awarded by the department in the categories
5 specified in paragraph (5).

6 (7) The number of contracts and dollar amounts awarded
7 annually pursuant to Section 14838.5 of the Government Code to
8 small businesses, microbusinesses, and disabled veteran business
9 enterprises.

10 (f) The level of participation of business enterprises, by race,
11 ethnicity, and gender of the owner, in contracts to the extent that
12 the information has been voluntarily reported to the department.
13 In addition, the report shall contain the levels of participation of
14 business enterprises, by race, ethnicity, and gender of the owner,
15 and whether the business is a lesbian, gay, bisexual, or transgender
16 owned business for the following categories of contracts, to the
17 extent that the information has been voluntarily reported to the
18 department:

19 (1) Construction.

20 (2) Purchases of materials, supplies, or equipment.

21 (3) Professional services.

22 (g) In the years 2011 and 2012, any errors reported to the
23 department by an awarding agency as required by Sections 10302,
24 10344, and 12104.5, in the previous fiscal year.

25 (h) The level of participation by employment social enterprises
26 in state contracting, including the following:

27 (1) Upon request, an up-to-date list of eligible employment
28 social enterprises bidders by general procurement and construction
29 contract categories.

30 (2) By general procurement and construction contract categories,
31 statistics comparing the employment social enterprises contract
32 participation dollars to the total state contract participation dollars.

33 (3) By awarding department and general procurement and
34 construction categories, statistics comparing the employment social
35 enterprises contract participation dollars to the total state contract
36 participation dollars.

37 (4) Any recommendations for changes in statutes or state
38 policies to improve opportunities for employment social
39 enterprises.

1 (5) The aggregate number of employees participating in
2 employment social enterprises and verification of on-the-job and
3 life skills training identified in subparagraph (D) of paragraph (3)
4 of subdivision (d) of Section 14837 of the Government Code. This
5 information shall be reported by categories, as established by the
6 department.

7 (i) The amendments made to this section by the act adding this
8 subdivision shall apply on and after January 1, 2013.

9 SEC. 14. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.