

AMENDED IN SENATE AUGUST 6, 1998

AMENDED IN SENATE JUNE 16, 1998

AMENDED IN ASSEMBLY MAY 22, 1998

AMENDED IN ASSEMBLY APRIL 28, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2505**

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**Introduced by Assembly Members Olberg and Machado**  
(Principal coauthor: Senator Kopp)

February 20, 1998

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~~An act to amend Sections 4533, 14837, and 14838 of the Government Code, and to add Section 25151 to, and to add Article 2 (commencing with Section 25165) to Chapter 2 of Part 3 of Division 3 of, the Public Contract Code, relating to small business. An act to amend Sections 14837 and 14838 of the Government Code, relating to small business.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2505, as amended, Olberg. Small business incentives.

~~(1) Existing law provides that whenever the state prepares an invitation for bid for a contract for goods in excess of \$100,000, with a specified exception, the state shall award a 5% preference to California-based companies who certify that no less than 50% of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a distressed area.~~

~~This bill instead would provide that whenever the state prepares a solicitation for the contract, the state shall award a 5% incentive to California-based companies who certify that no less than 50% of the labor required to manufacture the goods and perform the contract shall be accomplished at a worksite or worksites located in a distressed area.~~

~~(2)~~ The Small Business Procurement and Contract Act requires the Director of General Services and the directors of other state agencies to perform various activities to assist small businesses to participate in state contracts. “Small business” is defined for these purposes as a business in which the principal office is located in California and the officers of the business are domiciled in California, which is independently owned and operated, and which is not dominant in its field of operation. The director is authorized to use various criteria in making a detailed definition under these provisions.

This bill would additionally specify that a “small business,” within this definition, has 100 or fewer employees, and average annual gross receipts of \$10,000,000 or less over the previous three years. It would delete the requirement that a small business not be dominant in its field of operation, but would require that standards adopted by the director preclude the qualification of businesses that are dominant in their industry. It would include manufacturers, as defined, within this definition of “small business,” revise the criteria to be used by the director in defining that term, and require that standards applied in the definition be adopted by regulation.

The bill would provide that the definition of “small business” contained in the Small Business Procurement and Contract Act shall apply for purposes of an unspecified provision of law.

~~(3)~~

(2) The Small Business Procurement and Contract Act requires that with respect to state agencies that contract for the construction of state facilities, or for the delivery of services, the Director of General Services and the heads of the other agencies shall establish goals, consistent with those established by the Office of Small and Minority Business, for the extent of participation of small businesses in state procurement, construction contracts, and service contracts.



State agencies are also required to provide for a small business preference in these contracts where responsibility and quality are equal, according to specified formulas.

This bill instead would require the state agencies to establish goals, consistent with those established by the Department of General Services, for small business participation in acquisitions, including, but not limited to, construction, goods, and services *and information technology* contracts. It would require state agencies to provide for incentives to small businesses, and, until January 1, 2003, in the case of contracts entered into by the Department of General Services, to nonsmall businesses that provide for small business subcontractor participation, according to specified formulas.

~~(4) The bill would specify that certain provisions of the bill would become operative only if another unspecified bill is enacted.~~

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 4533 of the Government Code is~~  
2 ~~amended to read:~~

3 ~~4533. Whenever the state prepares a solicitation for a~~  
4 ~~contract for goods in excess of one hundred thousand~~  
5 ~~dollars (\$100,000), except a contract in which the~~  
6 ~~worksite is fixed by the provisions of the contract, the~~  
7 ~~state shall award a 5 percent incentive to~~  
8 ~~California-based companies who certify under penalty of~~  
9 ~~perjury that no less than 50 percent of the labor required~~  
10 ~~to manufacture the goods and perform the contract shall~~  
11 ~~be accomplished at a worksite or worksites located in a~~  
12 ~~distressed area.~~

13 ~~SEC. 2.—~~

14 ~~SECTION 1. Section 14837 of the Government Code~~  
15 ~~is amended to read:~~

16 ~~14837. As used in this chapter:~~

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



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

3 (c) “Manufacturer” means a business that is both of  
4 the following:

5 (1) Primarily engaged in the chemical or mechanical  
6 transformation of raw materials or processed substances  
7 into new products.

8 (2) Classified between Codes 2000 to 3999, inclusive, of  
9 the Standard Industrial Classification (SIC) Manual  
10 published by the United States Office of Management  
11 and Budget, 1987 edition.

12 (d) (1) “Small business” means an independently  
13 owned and operated business, or manufacturer, as  
14 defined in subdivision (c), the principal office of which is  
15 located in California, the officers of which are domiciled  
16 in California, and which, together with affiliates, has 100  
17 or fewer employees, and average annual gross receipts of  
18 ten million dollars (\$10,000,000) or less over the previous  
19 three years.

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

29 (3) Standards applied under this subdivision shall be  
30 established by regulation, in accordance with Chapter 3.5  
31 (commencing with Section 11340) of Part 1, and shall  
32 preclude the qualification of businesses that are dominant  
33 in their industry.

34 ~~SEC. 3.—~~

35 *SEC. 2.* Section 14838 of the Government Code is  
36 amended to read:

37 14838. In order to facilitate the participation of small  
38 business in state agency acquisitions, including, but not  
39 limited to, construction, goods, and services contracts,  
40 under the office of the State Architect or other state



1 agencies that contract for the construction, including  
2 alteration, demolition, repair, or improvement, of state  
3 facilities, or the delivery of services, the directors of  
4 General Services and of the other agencies, each within  
5 their respective areas of responsibility, shall do all of the  
6 following:

7 (a) Establish goals, consistent with those established  
8 by the Department of General Services, for small business  
9 participation in acquisitions, including, but not limited to,  
10 construction, goods, and services *and information*  
11 *technology* contracts.

12 (b) (1) Provide for a small business incentive in  
13 contracts for construction, the acquisition of goods or  
14 information technology, or the delivery of services.

15 (2) The incentive to small business shall be 5 percent  
16 of the lowest responsible bidder meeting specifications.  
17 In solicitations where factors other than price are  
18 considered for purposes of deciding awards, the  
19 5-percent incentive shall apply to each of those factors or  
20 criteria, except that it shall not be used to achieve  
21 minimum requirements, if any. However, the small  
22 business incentive shall not exceed fifty thousand dollars  
23 (\$50,000), or 5 percent of the evaluation factors or criteria  
24 for any bid. In bids in which the state has reserved the  
25 right to make multiple awards, this fifty thousand dollar  
26 (\$50,000) maximum incentive cost shall be applied, to the  
27 extent possible, so as to maximize the dollar participation  
28 of small businesses in the contract award.

29 (3) (A) In the case of contracts for the construction of  
30 state facilities or the delivery of ~~services—goods, services,~~  
31 *or information technology* that are entered into by the  
32 Department of General Services, there shall be an  
33 incentive for nonsmall businesses ~~that provide,~~ *known as*  
34 *the Business Incentive Partnership Program, that*  
35 *provides* for small business subcontractor participation,  
36 which shall be based upon the level of small business  
37 participation in proportion to the total amount of the  
38 contract, up to a minimum 5-percent incentive, as  
39 follows:

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1	Level of Small Business	Partnership Incentive
2	Subcontractor Participation	Percentage
3	Less than 3%	0%
4	3% to 9.99%	1%
5	10% to 19.99%	2%
6	20% to 29.99%	3%
7	30% to 39.99%	4%
8	40% or more	5%

9  
10 The ~~nonsmall—business—incentive—~~*Business Incentive*  
11 *Partnership Program* shall apply to solicitations where  
12 the award will be made to the lowest responsible bidder  
13 meeting specifications, as well as to each of the specific  
14 factors or criteria considered by the state agency in  
15 solicitations where multiple factors or criteria are  
16 considered for purposes of deciding awards, except that  
17 it shall not be used to achieve minimum requirements, if  
18 any. However, the ~~nonsmall—business—incentive—~~*Business*  
19 *Incentive Partnership Program* shall not exceed fifty  
20 thousand dollars (\$50,000), or 5 percent of the evaluation  
21 factors or criteria, for any bid. In bids in which the state  
22 has reserved the right to make multiple awards, this fifty  
23 thousand dollar (\$50,000) maximum incentive cost shall  
24 be applied, to the extent possible, so as to maximize the  
25 dollar participation of small businesses in the contract  
26 award.

27 (B) The ~~nonsmall—business—incentive—~~*Business*  
28 *Incentive Partnership Program* implemented pursuant  
29 to this paragraph shall be operative only until January 1,  
30 2003.

31 (4) The combined cost of incentives or preferences  
32 granted pursuant to this chapter and any other provision  
33 of law shall not exceed one hundred thousand dollars  
34 (\$100,000).

35 (c) Give special consideration to small businesses by  
36 doing both of the following:

- 37 (1) Reducing the experience required.
- 38 (2) Reducing the level of inventory normally
- 39 required.



1 (d) Give special assistance to small businesses in their  
2 preparation and submission of the information requested  
3 in Section 14310.

4 (e) Under the authorization granted in Section 10163  
5 of the Public Contract Code, make awards, whenever  
6 feasible, to small business bidders for each project bid  
7 upon within their prequalification rating. This may be  
8 accomplished by dividing major projects into subprojects  
9 so as to allow a small business contractor to qualify to bid  
10 on these subprojects.

11 ~~(f) Except as provided in Article 2 (commencing with~~  
12 ~~Section 12165) of Chapter 2 of Part 3 of Division 3 of the~~  
13 ~~Public Contract Code, small business bidders qualified in~~

14 *(f) Small business bidders qualified in* accordance with  
15 the provisions of this chapter shall have precedence over  
16 nonsmall business bidders in that the application of any  
17 bidder preference for which nonsmall business bidders  
18 may be eligible under any other provision of law shall not  
19 result in the denial of the award to a small business bidder.  
20 In furtherance of law pertaining to California's disabled  
21 veterans, in the event of a precise tie between the low  
22 responsible bid of a bidder meeting specifications of a  
23 small business, and the low responsible bid of a bidder  
24 meeting the specifications of a disabled veteran-owned  
25 small business, the contract shall be awarded to the  
26 disabled veteran-owned small business. This provision  
27 shall apply to those cases where the small business bidder  
28 is the lowest responsible bidder, as well as to those cases  
29 where the small business bidder is eligible for award as  
30 the result of application of the 5-percent small business  
31 bidder incentive granted by subdivision (b).

32 ~~SEC. 4. Section 25151 is added to the Public Contract~~  
33 ~~Code, to read:~~

34 ~~25151. For purposes of this chapter, the definition of~~  
35 ~~"small business" contained in Section 14837 of the~~  
36 ~~Government Code shall apply.~~

37 ~~SEC. 5. Article 2 (commencing with Section 25165) is~~  
38 ~~added to Chapter 2 of Part 3 of Division 3 of the Public~~  
39 ~~Contract Code, to read:~~

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Article 2. ~~Small Business Incentives~~

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3 25165. Pursuant to paragraph (2) of subdivision (b) of  
4 Section 14838 of the Government Code, for every  
5 competitive acquisition of goods and services, state  
6 agencies shall provide a 5 percent incentive for small  
7 business as part of the agency's bid evaluation method.  
8 Pursuant to subdivision (f) of Section 14838 of the  
9 Government Code, except as specified therein, the  
10 application of any bidder incentive or preference for  
11 which a nonsmall business bidder may be eligible under  
12 any provision of law shall not result in denial of award to  
13 a small business bidder qualified for the 5 percent small  
14 business incentive.

15 25166. Pursuant to paragraph (3) of subdivision (b) of  
16 Section 14838 of the Government Code, for every  
17 competitive acquisition of goods and services, as part of  
18 the agency's bid evaluation method, state agencies shall  
19 provide a 5 percent incentive for nonsmall businesses  
20 that provide for small business subcontractor  
21 participation, which shall be based upon the level of small  
22 business participation in proportion to the total amount  
23 of the contract, up to a maximum 5 percent incentive, as  
24 follows:

Level of Small Business	Incentive
Subcontractor Participation	Percentage Granted
Less than 3%	0%
3% to 9.99%	1%
10% to 19.99%	2%
20% to 29.99%	3%
30% to 39.99%	4%
40% or more	5%

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35 25167. Pursuant to subdivision (f) of Section 14838 of  
36 the Government Code, in the event of a precise tie  
37 between a small business and a disabled veteran-owned  
38 small business, the contract shall be awarded to the  
39 disabled veteran-owned small business.



1 ~~SEC. 6. Sections 4 and 5 of this act shall become~~  
2 ~~operative only if \_\_\_\_\_ of the 1997-98 Regular Session~~  
3 ~~is enacted.~~

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