

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN ASSEMBLY JUNE 14, 2010

AMENDED IN ASSEMBLY JUNE 7, 2010

SENATE BILL

No. 1484

Introduced by Senator Wright

March 8, 2010

An act to add *and repeal* Section 14838.8 to of the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1484, as amended, Wright. Public contracts: procurement: small business, microbusiness, and disabled veteran business enterprises.

The Small Business Procurement and Contract Act requires the directors of the Department of General Services and other state agencies entering into contracts for the provision of goods, information technology, and services to the state, and in the construction of state facilities, to provide for a preference, as specified, for any bid to small businesses and microbusinesses, under specified circumstances. The act permits a state agency to award a contract of a specified limited amount for the acquisition of goods, services, or information technology, to a certified small business, including a microbusiness, or to a disabled veteran business enterprise if the agency receives certain other price quotations, as specified.

This bill, *until January 1, 2017*, would *generally* prohibit the Director of General Services and the directors of other state departments or offices that enter into contracts from engaging in the bundling of contracts, as defined, which has the effect of restricting or excluding small business, microbusiness, or disabled veteran business enterprise,

from the state contracting process. ~~The bill would also provide that the participation goals for small business, microbusiness, or disabled veteran business enterprises participation for the act are not met by awarding a contract for goods to a prime contractor that engages a small business, microbusiness, or disabled veteran business enterprise as a subcontractor on that contract.~~ *The bill would permit the bundling of contracts by the Director of General Services during a state of emergency as declared by the Governor or if the director makes specified determinations about the bundled contract and submits them to the California Small Business Advocate, who would be required to determine whether or not a bundled contract is appropriate for that particular transaction and whose determination would be final and binding on the director. The bill would permit the advocate to make other recommendations to the director regarding any terms or conditions that might be incorporated in the bundled contract to reduce its potential negative impact on small business.*

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 14838.8 is added to the Government
- 2 Code, to read:
- 3 14838.8. (a) Notwithstanding any other law, *and except as*
- 4 *provided in subdivisions (c) and (d)*, to facilitate the participation
- 5 of small businesses, microbusinesses, or disabled veteran business
- 6 enterprises in the provision of goods to the state, the Director of
- 7 General Services and the directors of other state departments or
- 8 agencies that enter into contracts within their respective areas of
- 9 responsibility shall not engage in bundling of contracts, which has
- 10 the effect of restricting or excluding small businesses,
- 11 microbusinesses, or disabled veteran business enterprises, from
- 12 the state contracting process.
- 13 (b) As used in this section, “bundling of contracts” means a use
- 14 of solicitation for a single contract or a multiple award contract to
- 15 satisfy two or more requirements of any state agency, department,
- 16 board, or commission for goods that restricts competition or limits
- 17 the number of suppliers by being likely unsuitable for award to a
- 18 small business due to any one or more of the following:

1 (1) The diversity, size, or specialized nature of the elements of
2 the performance specified.

3 (2) The aggregate dollar value of the anticipated award.

4 (3) The geographical dispersion of the contract performance
5 sites.

6 (4) Restrictive contract requirements or any other similar
7 procurement strategy or factor that limits the ability of a responsible
8 small business to compete or otherwise participate as a prime
9 contractor in the procurement process.

10 ~~(e) The director or any agency, department, board, or~~
11 ~~commission does not facilitate or provide for small business,~~
12 ~~microbusiness, or disabled veteran business enterprise participation~~
13 ~~within the meaning of this chapter by awarding a contract for goods~~
14 ~~to a prime contractor that engages a small business, microbusiness,~~
15 ~~or disabled veteran business enterprise as a subcontractor on that~~
16 ~~contract.~~

17 *(c) (1) The Director of General Services may enter into a*
18 *bundled contract for goods upon the approval of the California*
19 *Small Business Advocate pursuant to the process described in this*
20 *subdivision.*

21 *(2) (A) To enter into a bundled contract for goods, the Director*
22 *of General Services shall first make a determination that includes*
23 *all of the following:*

24 *(i) The bundled contract for goods would provide measurable,*
25 *substantial benefits to the state. For purposes of this paragraph,*
26 *“measurable, substantial benefits” means the contract will provide*
27 *cost savings, improvement in quality, or a reduction in acquisition*
28 *time.*

29 *(ii) Alternative acquisition strategies that involve small business*
30 *participation cannot reasonably be used.*

31 *(iii) Sufficient administrative resources exist to adequately*
32 *oversee the bundled contract for goods.*

33 *(B) If the Director of General Services finds and determines*
34 *that the bundled contract for goods meets all of the requirements*
35 *described in subparagraph (A), the director shall submit a report*
36 *of its findings and determinations to the California Small Business*
37 *Advocate.*

38 *(3) The California Small Business Advocate shall review the*
39 *findings and determinations submitted pursuant to paragraph (2)*
40 *and determine whether or not a bundled contract for goods is*

1 appropriate for that particular transaction. The California Small
2 Business Advocate shall then promptly inform the Director of
3 General Services of the advocate’s determination regarding the
4 contract, and whether the director is permitted or prohibited from
5 entering into the bundled contract for goods. The California Small
6 Business Advocate’s determination shall be final and binding on
7 the director.

8 (4) The California Small Business Advocate, at the time his or
9 her determination is submitted to the Director of General Services
10 pursuant to paragraph (3), also may make other recommendations
11 to the director regarding any terms or conditions that might be
12 incorporated into the bundled contract to reduce its potential
13 negative impact on small business.

14 (d) The Director of General Services may enter into a bundled
15 contract for goods during a state of emergency as declared by the
16 Governor.

17 (e) This act shall remain in effect only until January 1, 2017,
18 and as of that date is repealed, unless a later enacted statute, that
19 is enacted before January 1, 2017, deletes or extends that date.