

Date of Hearing: April 17, 2018

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Sharon Quirk-Silva, Chair

AB 2762 (Carrillo and Muratschi) – As Amended March 22, 2018

**SUBJECT:** Public contracts: disabled veteran business enterprises: local small business enterprises: social enterprises

**SUMMARY:** Increases the maximum value of a procurement preference from 5% to 15% and creates two additional categories of targeted procurement activities, including disabled veteran businesses and social enterprises. Specifically, **this bill:**

- 1) Expands the actions a local agency is authorized to take to facilitate contract awards by:
  - a) Expanding the category of bidder which may be offered a procurement preference from only small businesses to also include disabled veteran businesses or social enterprises, as defined. These preferences may be applied to contracts for construction, the procurement of goods, or the delivery of services.
  - b) Increasing the maximum value of a procurement preference from 5% to 15%.
  - c) Expanding the authority to set a subcontracting participation goal for small businesses to also include participation goals for disabled veteran businesses and social enterprises.
  - d) Expanding the authority to require a bidder to make a good faith effort to meet a subcontracting participation goal for small businesses to also included disabled veteran businesses and social enterprises.
- 2) Authorizes a local government to set its own definitions of a disabled veteran business and a social enterprise when establishing and applying preferences, setting subcontracting goals, and requiring good faith efforts.
- 3) Notwithstanding the authority to set its own terms to define a qualifying disabled veteran business and social enterprise, each local agency is required to include in those definitions the following:
  - a) A "disabled veteran business" includes a business meeting the state certification requirements for disabled veteran-owned business enterprises (DVEB);
  - b) A "social enterprise" includes a nonprofit or for-profit business whose primary purpose is to benefit the economic, environmental, or social health of the community and which uses the methods and disciplines of business and the power of the marketplace to advance its social, environmental, and human justice agendas, wherein the organization applies commercial strategies to maximize improvements in human and environmental well-being that may include maximizing social impact rather than profits for external shareholders. Social enterprise shall include a business that has been in operation for at least one year providing transitional or permanent employment to a transitional workforce or providing social, environmental, or human justice services. Social enterprise is required to also include a social enterprise certified by the administering local agency;
  - c) "Transitional employment" means a short-term or long-term, wage-paying, subsidized or nonsubsidized employment that combines real work, skill development, and supportive services to

help a traditional workforce to overcome barriers to employment and transition to unsubsidized competitive employment; and

- d) "Transitional workforce" means underemployed or hard-to-employ persons who may be homeless, formerly incarcerated, or who either have not worked for an extended period of time or face significant barriers to employment, where applicable.

#### **EXISTING LAW – Procurement Preferences and Contracting by Local Agencies:**

- 1) Notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, a local agency is authorized to do any of the following in facilitating contract awards to small businesses:
  - a) Provide for a small business preference in construction, the procurement of goods, or the delivery of services where responsibility and quality are equal. The preference is authorized to be as high as 5% of the lowest responsible bidder meeting specifications.
  - b) Establish a subcontracting participation goal for small businesses and grant a preference of up to 5% to those bidders who meet the goal.
  - c) Require bidders to make good faith efforts to meet a subcontracting participation goal. Bidders that fail to meet the goal are required to demonstrate to the local government that they made good faith efforts to utilize small business contractors.
- 2) Authorize a local agency to set additional guidelines for local preference purposes, including defining the term "small business."
- 3) Notwithstanding the authority to set the definition of small business, the local agency is required to include all small business enterprises certified by the state as a small business.
- 4) Requires a local agency, which requires contracts be awarded to the lowest responsible bidder meeting, or making a good faith effort to meet, participation goals for DVBEs, to provide in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:
  - a) The name and the location of the place of business of each subcontractor certified as a DVBE who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill the disabled veteran business enterprise participation goal.
  - b) The portion of work that will be done by each DVBE subcontractor included in the bid. The prime contractor is required to also list only one subcontractor for each portion of work.

#### **EXISTING LAW – Procurement Preferences and Contracting by State Agencies:**

- 1) Designates the Department of General Services (DGS) as the administrator of the state Small Business Procurement and Contract Act (Small Business Procurement Act), which includes certifying and implementing targeted preference programs for certified small businesses, microbusinesses, and DVBEs.

- 2) Applies the 3% DVBE participation goal on each awarding state agency, department, and officer that enters into a contract for materials, supplies, equipment, alteration, repair, or improvement. This requirement can be waived on a specific contract with the approval of the department director or another designated person.
- 3) Authorizes a 5% preference for state contract bidders that are either a certified small business, microbusiness, or a larger business that commits to using a certified small business or microbusiness in undertaking the contract. This 5% is calculated based on the bid of the lowest responsible bidder, which may be a small or non-small business. The value of this preference, for the purpose of bid evaluation, is limited to \$50,000 and may be up to \$100,000 when combined with any other preferences in a single bid.
- 4) Authorizes a 5% Target Area Contract Preference (TACPA) preference for a state contract bidder that agrees to perform the contract work in a designated "distressed area" and a second "local workforce" preference of 1% to 4% based on the amount of work on the contract being performed. The value of each of these preferences, for the purpose of bid evaluation, is limited to \$50,000 and \$100,000 when combined with each other or any other preferences in a single bid.
- 5) Authorizes contracting departments to offer a DVBE incentive. The application of an incentive varies from that of the small business and TACPA both in when it is incorporated into competitive solicitations and in how the incentive percentages are determined and calculated. Unlike preferences where there is a 5% standardized value included in determining competitive solicitations, discretion is left to departments to determine incentive percentages for a particular transaction based upon a business strategy to achieve their departments' annual 3% DVBE procurement participation goal.
- 6) Defines a small business as a business certified by the state as independently owned, not dominant in its field of operation, domiciled in California, employing 100 or fewer employees, and earning \$10 million or less in average annual gross revenues for the three previous years. For the purposes of public works contracts, the small business may have up to 200 employees and average annual gross receipts of up to \$36 million over the preceding three years.
- 7) Defines a DVBE as a business certified as being a sole proprietorship, corporation, or partnership with its home office located in the US and which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business. In addition:
  - a) The disabled veteran is a veteran of the military, naval, or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts, "Old Scouts," and the Special Philippine Scouts, "New Scouts," and those who have at least a 10% service-connected disability and are domiciled in the state.
  - b) A sole proprietorship is at least 51% owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51% of its stock is unconditionally owned by one or more disabled veterans; a subsidiary that is wholly owned by a parent corporation, but only if at least 51% of the voting stock of the parent corporation is unconditionally owned by one or more disabled veterans; or a joint venture in which at least 5% of the joint venture's management, control, and earnings are held by one or more disabled veterans.
  - c) The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.

**FISCAL EFFECT:** Unknown

**POLICY FRAME:** AB 2762 would establish two new preference categories for local agency procurement activities, including disabled veteran businesses and social enterprises. While a worthy public policy, the bill models the new preferences after the existing 5% small business preference and increases the value of each preference from 5% to 15%. This approach creates certain implementation issues and potentially significant costs to local agencies, if local agencies haven't established clear guidelines and policies.

These issues, however, are implementation considerations and do not necessarily distract from the importance of using government procurement expenditures to address California's growing income inequality. The analysis includes information on the need to create a more inclusive economy, an example of how preferences work in procurement evaluation, a discussion on good faith effort when a contractor fails to meet participation goals, concerns with the state's DVBE program, and background on social enterprises, including previous legislation. Suggested amendments are included in Comment 8.

**COMMENTS:**

- 1) **Growing Income Inequality:** California's overall economic growth and increase in jobs has outpaced the US in general, often ranking the state within the top five states in terms of its economic condition. Most recently, the Department of Finance has announced that California has the sixth largest economy in the world. This success, however, has not been consistent throughout the state with many regions and certain population groups still experiencing recession-related poor economic conditions.

According to the US Census Bureau, California's poverty rate is 14.3% as compared to a national rate of 14.0%. It is estimated that nearly a quarter of California's children are living in households with annual incomes near or below the federal poverty line. Using the federal Supplemental Poverty Measure, which accounts for geographic differences, transfer payments, and out-of-pocket expenses, 20.4% of California residents live in poverty, as compared to 14.7% nationally averaged from 2014 to 2016. A significant contributing factor to these poverty rates are the education and basic skill deficit of many Californians from rural and inner city areas, historically underserved population groups, and those who are more recently encountering employment challenges, including returning veterans.

A review of the February 2018 unemployment numbers illustrates this expanding pattern of economic disparity between regions and population groups in California.

<b>Unemployment February 2018 (not seasonally adjusted)</b>			
	<b>Unemployment Rate</b>		<b>Unemployment Rate</b>
California	4.5%	California	4.5%
Colusa County	20.0%	Blacks	6.8%
Imperial County	16.0%	Hispanics	5.5%
Los Angeles County	4.5%	Whites	4.7%
Orange County	3.0%	16 to 19 year olds	17.3%
Riverside County	4.6%	20 to 24 year olds	7.4%

Sacramento	4.2%	25 to 34 year olds	5.0%
San Bernardino County	4.3%	In February 2018 these were 11.7 million people not in the labor force.  Source: California Employment Development Department	
San Mateo County	2.4%		
Tulare County	12.1%		

While the state's unemployment rate for February 2018 (not seasonally adjusted) was 4.5%, some areas of the state had lower rates, while others were considerably higher. San Mateo County recorded the lowest at 2.4% and Colusa County experienced the highest unemployment rate at 20.0% and Imperial County the second highest at 16.0%. Under the provisions of the federal Workforce Innovation and Opportunity Act, high unemployment is considered any rate above 6.5%.

Looking more specifically at different population groups, the data also shows the great discrepancies between the statewide rate and the rates of key subgroups, including unemployment among Blacks and Hispanics being 6.8% and 5.5% respectively. For the youngest members of the workforce obtaining quality jobs remains a significant issue, with unemployment among 16 to 19 year olds and 20 to 24 year olds being well above the state average, ranging from 17.3% to 7.4% respectively. According to February's figures, 11.7 million people of working age are not participating in the labor force.

AB 2762 is designed to increase public contracting with small businesses, disabled veteran businesses, and social enterprises that provide transitional or permanent employment to a transitional workforce.

- 2) **Small Business and DVBE Procurement Act:** California has a 30 year history of using state contracting to support business development within targeted business populations. Statute sets an annual 3% DVBE procurement participation goal, and a 2006 executive order sets a 25% goal for small businesses and microbusinesses for state agencies, departments, boards, and commissions (state agencies).

The Small Business Procurement Act states that it is the policy of the State of California that the state aid the interests of small businesses in order to preserve free competitive enterprise and to ensure that a fair portion of the total purchases and contracts of the state be placed with these enterprises.

Statute further states that DVBE participation is strongly encouraged to recognize the sacrifices of California's disabled military veterans and to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship.

In order to assist state agencies in reaching these goals, the state authorizes both a procurement preference for using a certified small business as a prime or subcontractor and a streamlined alternative procurement process for smaller size contracts (\$5,000 and \$250,000) where a state agency can contract directly with a certified small business after comparing the bid against two additional small businesses. The state also administers a DVBE incentive that allows a state agency to set an incentive percentage for a particular transaction based upon a business strategy to achieve their annual 3% DVBE procurement participation goal.

In the state's experience, a majority of DVBEs are smaller size firms with 75.4% having dual certifications as a DVBE and microbusiness and 9.6% having dual certifications as a DVBE and small business. The remaining 15% of DVBEs operate with only a single DVBE certification. Given that small businesses are net job generators in the state, the state focuses considerable attention on

supporting procurement opportunities and meeting other business development needs, including capital access, cyber security, and disaster preparedness.

AB 2762 builds on a 2012 statute that aligned local agency procurement programs with the state's certified small business program in order to ensure that small businesses that were currently certified by the state to do contracting would be assured of being eligible to engage in procurement activities with local agencies. [AB 1783 (*Perea*), Chapter 114, Statutes of 2012]

- 3) **How Procurement Preferences Work:** AB 2762 proposes to expand the authority of local agencies to set their own procurement goals and provide preferences for the purpose of increasing disabled veteran business and social enterprise participation in local agency contracts.

Currently, local agencies are authorized to set a small business participation goal and offer a related 5% preference. Implementation of AB 2762 could result in a local agency reviewing bids with two to three preferences. Currently, the bill does not specifically address how those bids would be evaluated against other bid packages. Below is an example of how the state addresses these issues.

Bidders for state contracts may include procurement preferences as a means to strengthen their bids' competitiveness. The value of any single 5% preference is limited to \$50,000 and the combined value of two or more preferences cannot exceed 15% or \$100,000, whichever is lower.

The state currently recognizes two preferences based on the type of business and one preference based on the location of the business and the employees who undertake contract work. Business type preferences include a 5% preference for bids that include a small business or microbusiness as either a prime or subcontractor. The geographically-based TACPA provides a 5% preference for completing the contract in an economically distressed area and up to an additional 4% for hiring economically disadvantaged workers.

The state also offers a DVBE business incentive, which is similar to a preference, but the exact percentage value is determined by the contracting entity on a per bid basis and applied at a different point in the bid review process than the 5% procurement preference process. It is not uncommon for a bidder to apply a combination of preferences, as well as the DVBE incentive, in his or her bid package.

When a small business preference is claimed, it is calculated as 5% of the net bid price of the lowest responsible bidder. As an example, Bidder A is the lowest responsible bidder with a \$5 million bid. Bidder A is not a small business and did not include small businesses as subcontractors.

When the bids are opened, Bidder A is identified as having submitted the lowest responsible bid. The contracting agency then multiplies \$5 million by 0.05 (5%) to determine \$250,000 as the maximum value of the preference. Because of the financial cap, the total value of the preference would be limited to \$50,000.

Bidder B is a certified small business and submits a \$5.1 million bid. In evaluating Bidder B's bid price, the contracting department would subtract the preference adjustment from the net bid price (\$5.1 million - \$50,000 = \$5.05 million). In this example, under existing law, the non-small business bidder, Bidder A, would be awarded the contract because the value of the incentive is insufficient to compete with the lowest bid.

If, however, Bidder B also committed to complete the contract in an economically distressed area, an additional \$50,000 preference would be added to the calculation of the adjusted bid price. This second preference would be sufficient to meet the value of the lowest responsible bidder. More specifically, Bidder B's adjusted bid would be \$5 million (\$5.1 million - \$100,000), which is the same as Bidder A. All things being equal, the contract award goes to the lowest responsible small business bid. Please note the preference and incentive do not change the actual bid price, the calculations are performed in order to compare and rank bids.

While utilizing two 5% preferences was sufficient to have the small business be awarded the contract in this example, sometimes the differences between bids are larger. This is especially true on larger projects. Determining an appropriate balance between increasing small business participation in state procurement against increased costs to the General Fund has been the subject of several bills. In 2015, the committee heard and passed unanimously AB 1125 (Weber), which proposed to increase the value of the small business preference to \$100,000 and to \$150,000 when combined with other preferences.

With 75% of DVBEs having a dual certification as a small business, local agencies will likely encounter a bidder that qualifies for more than one preference. AB 2762 does not currently reflect how a local agency would allow a bidder to combine preferences, nor is there a financial cap on the value of an individual preference. The committee may wish to consider both of these provisions as part of this broader proposal to expand preferences.

- 4) **Good Faith Efforts:** Existing law authorizes the use of "good faith effort" for a number of public contracting activities, including local government contracting with small businesses. The federal government also allows "good faith effort" to be a component of a bid package that would otherwise require small and disadvantaged business participation.

The state's authority to accept good faith effort in contracts that required DVBE participation was eliminated in July 2009. While there remains some good faith effort in transportation contracting, it is generally only in cases where the contract will be paid with blended state and federal funds. As a result of the 2009 policy change, bidders responding to state procurement solicitations are required to identify a DVBE subcontractor within their bid otherwise their bid will be rejected. According to a DGS *Frequently Asked Questions Fact Sheet*, "Good Faith Effort" was abolished for four reasons:

- To eliminate costs for bidders to preform and document "Good Faith Effort."
- To eliminate costs to the state relating to the review of "Good Faith Effort."
- To increase actual DVBE participation in state contracting.
- To enhance each state department's ability to meet the legislatively mandated 3% DVBE procurement participation goal.

AB 2762 proposes to extend the existing "Good Faith Effort" authority for local agency contracts with small businesses to contracts including subcontractor mandates for disabled veteran business and social enterprise participation. Given the complexities of evaluating an individual contractor's efforts, the committee may wish to consider requiring the local agency to have adopted a specific policy on how this evaluation will be undertaken prior to the issuing of contract solicitations that require social enterprises and disabled veteran businesses.

- 5) **Concerns with DVBE Program:** AB 2762 is proposing to authorize local agencies to set disabled veteran participation goals and offer preferences to bidders to encourage disabled veteran

participation. In providing this new authority, the committee may wish to consider the current challenges facing the state's DVBE program.

As the Chart below shows, the statewide DVBE participation rate has met or exceeded the 3% goal for each of the past seven years. Programmatic challenges, however, continue to plague the program. Among other things, significant issues have been raised relative to the accuracy of the reporting data and on fraudulent bidder practices. The Committee has repeatedly heard from veteran groups about bidders that fail to follow through on the DVBE commitments made in bid proposals, bidders that include DVBEs that haven't renewed their certification, and DVBEs being included within bid proposals but never actually performing a commercially useful function.

<b>DVBE Five-Year Contracting Activity – Mandated Agencies</b> (in millions)				
<b>Fiscal Year</b>	<b>Total Contract Dollars</b>	<b>Total DVBE Dollars</b>	<b>Total DVBE Percent</b>	<b>Total DVBE Contracts</b>
2015-16	\$5,855	\$274	4.67%	18,638
2014-15	\$8,105	\$314	3.8%	16,192
2013-14	\$6,566	\$241	3.67%	12,777
2012-13	\$7,151	\$216	3.03%	14,907
2011-12	\$7,173	\$340	4.74%	16,246
<b>Average</b>	<b>\$6970</b>	<b>\$277</b>	<b>4.00%</b>	<b>15,752</b>

DGS Consolidated Reports for the contracting periods

While some of these concerns have been addressed in legislation which increased penalties, defined commercially useful function, and strengthened bidder reporting requirements, among other actions, other issues remain to be addressed. More specifically, concerns over slow payments to DVBE subcontractors, inconsistent reporting by contracting agencies, lack of enforcement tools to keep poor performing DVBEs from obtaining new awards, and challenges to increasing the number of certified DVBEs that participate in state contracting activities have not been comprehensively addressed in more than a decade.

In 2013-14, the Joint Legislative Audit Committee approved a program review of the DVBE Program. As part of the State auditor's 2013-14 review, five awarding departments were visited in order to evaluate the documentation used to support their reported DVBE participation data. According to the Auditor, *"All five departments could not fully support the amounts reported, and four of the five had significant errors. In some cases, departments failed to maintain supporting records or manually counted their DVBE data incorrectly, such as double-counting DVBE contracts or taking credit for working with firms who were not DVBEs. The departments we visited also used different methodologies for reporting their DVBE data, thus limiting the public's ability to compare the performance of different awarding departments."*

Among other findings, the State Auditor found the following:

- a) The State's current method of measuring the success of the DVBE program may distort an assessment of whether the program is meeting the legislative intent to increase DVBE participation in state procurement.
- b) The data in the State Contract and Procurement Registration System indicates that only a relatively small subset of DVBE firms is awarded contracts. During fiscal year 2012–13, 83% of the DVBE prime contract award amounts went to only 30 DVBE firms. *No similar assessment was made regarding subprime contractors.*



- c) Reporting methodologies differ by state agencies on DVBE participation.
- d) DGS has not provided clear guidance as to what level of support and documentation is sufficient to support their reported DVBE performance data nor how to report DVBE participation on multiyear contracts. *Since the audit, DGS has modified training documents to clarify many of the issues raised in the audit.*

Based on these findings, the Auditor's recommendations focused on taking actions to increase the overall number of different DVBEs that participate in state contracting, as well as more consistent reporting and documentation including a heightened role and accountability for CalVet. In response to the audit and their own review of the program, DGS and CalVet have committed a number of concrete changes, including to more closely oversee the payments to DVBE subcontractors and to modify training materials to ensure program requirements are being consistently followed.

While expanding contracting opportunities to disabled veteran businesses advances an important public policy, the committee may wish to consider proactively addressing the challenges state government is facing in authorizing a similar program at the local level.

- 6) **New Forms of Business:** Demographic and economic shifts are giving rise to new forms of business development and new types of working relationships between owners, employees, contractors, and other businesses. AB 2762 proposes to authorize local agencies to set procurement participation goals and offer a financial preference for bids that include a social enterprise. The following is some preliminary research on this emerging form of "business."

Among other models, the social enterprise model combines entrepreneurial activity with a social purpose. Because they prioritize social impact over the need to maximize profit for owners or shareholders, a growing number of public entities are looking into how the model could be used in their communities to tackle what had previously been considered intractable problems.

To date, much of the work has been at the pilot level, but outcomes seem to be promising. One study by Mathematica, a US based research firm, looked at the outcomes from seven social enterprise programs assisting 282 workers. As part of the same study, Mathematica also undertook a comparative analysis of workforce outcomes for 154 social enterprise workers and 37 eligible workers who were not hired at a social enterprise. According to the report, the results suggest that "social enterprises may help workers gain employment and move toward economic self-sufficiency and life stability; however, the impact-study results are inconclusive, in part because of the small samples."

Another recent study by Social Ventures in Australia, found that social enterprises have demonstrated that they can create jobs for people excluded from the mainstream workforce, particularly the long-term unemployed, and showed that this equity outcome is also efficient, as government investment in the creation of businesses is returned via taxation revenue and savings in social security expenditure. These findings are similar to the Mathematica study, which also found that the percentage of total income from government transfers decreased from 71% to 24% and that total monthly income for the workers increased by 91%.

The European Union regularly measures the economic impact of this evolving area of businesses' development and reports that the "social economy" employs over 11 million people in the EU, accounting for 6% of total employment.

- 7) **Procurement Preferences and Social Enterprises:** In 2016, the Assembly Committee on Jobs, Economic Development, and the Economy heard and passed SB 1219 (Hancock), which proposed to establish a 5% state procurement preference for social enterprises that provided employment and training to individuals who face significant barriers to employment.

While the committee unanimously passed the measure (8 to 0), the committee made a number of operational amendments to assist state agencies in implementing the preference, including, but not limited to:

- a) Requiring a social enterprise to be organized as a Benefit Corporation, Social Purpose Corporation, or a nonprofit organization.
- b) Requiring third-party verification of workforce-related provisions, including, but not limited to, local workforce boards, and other state, local, regional, or government entities.
- c) Authorizing DGS to assign portions of the certification process, oversight, and auditing to another public entity in order to ensure that key management responsibilities would not be overlooked due to pre-existing workloads.
- d) Setting a framework for DGS to follow when investigating potentially fraudulent behavior by a mission driven organization that purports to help individuals who face barriers to employment receive training and work skills.

In authorizing the preference, SB 1219 limited the overall value of the preference to 5% with a limitation on the total financial value of the preference to be no greater than \$50,000, or, when added to other preferences, the total value cannot exceed \$100,000. These limitations are in line with the state program for small businesses and microbusinesses.

AB 2762 would allow for a procurement preference of up to 15% and has no limitation on financial value. In implementing the social enterprise preference, local agencies would likely benefit from considering how best to standardize certification, verify training and hiring by social enterprises, and investigate fraudulent behavior, within the context of their existing responsibilities.

- 8) **Proposed Amendments:** Below is a list of amendments the committee may wish to pursue in addressing policy and implementation issues raised in the analysis:
- a) Limit an individual preference to be no greater than 7%.
  - b) Allow up to a 15% preference for bids including two or more preferences.
  - c) Limit the value of a single preference to \$100,000 (*double small business state contracts §1438 GC*).
  - d) Limit the value of all combined preferences to be \$200,000 (*double small business state contracts §1438 GC*).
  - e) Require the local agency to adopt a targeted procurement policy prior to establishing a preference program. Require the policy to include, at a minimum:
    - i) A definition of eligible bidder under each preference category the local agency intends to use, i.e. small business, disabled veteran business, and social enterprise.
    - ii) A specified percentage and maximum financial value of an individual preference and of multiple preferences when two or more preferences are being applied to a bid.

- iii) A policy to address fraudulent behavior on the part of a contractor, subcontractor, or other individual for the purpose of qualifying for a preference (*example §14842 GC*)
  - iv) A certification process for "social enterprise" if the local agency intends to offer a social enterprise preference.
  - v) A policy for determining whether a bidder has made a good faith effort to meet a procurement participation goal.
  - vi) A policy for a prime contractor to replace a subcontractor in its bid or offer with another qualifying subcontractor. (*consistent with MC §999.5*)
  - vii) A policy to require that any contractor or subcontractor that is used to meet a preference serves a commercially useful function. (*consistent with GC §14837 and MVC §999*)
- f) Require the local agency to set a certification process for social enterprises prior to establishing a social enterprise preference.
  - g) Authorize a prime contractor, with the approval of the local agency, to substitute another subcontractor. (*consistent with MC §999.5*)
  - h) Clarify that the local agency is required to include all bidders who meet the requirements in statute as a "small business," "veteran business," and "social enterprise" when setting their own definitions of an eligible bidder in a preference category.
  - i) Require small businesses, disabled veteran businesses, and social enterprises serve a commercially useful function in order for a preference to be applied. (*consistent with GC §14837 and MVC §999*)
  - j) Sunset the authority to provide a preference to disabled veteran businesses and social enterprises in six years.
- 9) **Related Legislation:** Below is a list of related legislation.
- a) **AB 415 (Chiu) Employment Social Enterprise:** This bill allows the California Department of Social Services to contract with employment social enterprises to provide CalFresh Employment and Training services. The bill also authorizes a county to contract with an employment social enterprise and designated intermediary to provide services to its CalFresh Employment and Training Program participants. Status: Signed by the Governor, Chapter 340, Statutes of 2017.
  - b) **AB 1125 (Weber) Small Business Preference:** This bill would have increased the maximum financial value of an individual bid preference from \$50,000 to \$100,000 and increases the maximum value of multiple preferences from \$100,000 to \$150,000. Status: Held in Senate Appropriations, 2015.
  - c) **AB 2022 (Medina) Target Area Contract Preference Act:** This bill changes the Target Area Contract Preference Act by redefining what qualifies as an economically distressed area. Specifically, a "distressed area" is in the top quartile of census tracts for having the highest unemployment and poverty in the state as determined by the Department of Finance. Status: Signed by the Governor, Chapter 780, Statutes of 2014.
  - d) **SB 21 (Evan) Eliminates Good Faith Effort:** This bill requires awarding departments to award contracts to the lowest responsible bidder meeting specific statewide participation goals for disabled veteran business enterprise instead of making a good faith effort. The bill also requires state agencies report to the DGS and the Legislature on the impacts upon outreach efforts and the actual award of contracts to bidders meeting the statewide participation goals following the

elimination of good faith effort as a means to meet state DVBE contracting goals. Status: Signed by the Governor, Chapter 19, Statutes of 2009, Fourth Extraordinary Session.

- e) ***SB 1219 (Hancock) Social Enterprise Preference:*** This bill would have authorized a 5% employment social enterprise preference for bid packages applying for a state contract, including a contract with the California State University. This is an identical provision to the small business and microbusiness preference: a single preference which may not exceed \$50,000 or when added to other preferences, the total value cannot exceed \$100,000. Status: Vetoed by the Governor in 2016. The Governor's veto message stated: "*SB 1219 establishes a new procurement preference for employment social enterprises. While the goal of these bills are well-intentioned, the implementation of these bills require an expensive modification to FISCAL at a time when the state must focus its resources on the project's successful deployment.*"

#### **REGISTERED SUPPORT / OPPOSITION:**

##### **Support**

Los Angeles County Board of Supervisors (sponsor)  
Kitchens for Good  
New Door Ventures  
REDF

##### **Opposition**

None on File

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