

AMENDED IN ASSEMBLY APRIL 19, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2974

Introduced by Committee on Jobs, Economic Development, and the Economy (Assembly Members Cervantes (Chair), Choi (Vice Chair), Petrie-Norris, Ramos, and Smith)

March 22, 2022

An act to amend Section 14838.1 of the Government Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 2974, as amended, Committee on Jobs, Economic Development, and the Economy. Small Business Procurement and Contract Act: federal Infrastructure Investment and Jobs Act funding.

Existing law requires the directors of the Department of General Services and other state agencies that enter into contracts concerning the provision of goods, information technology, services, and construction of state facilities, to establish goals for the extent of participation of small businesses, including microbusinesses, for those contracts, to provide for small business preference, as specified, in the award of those contracts, and to give certain special considerations, assistance, and awards, whenever feasible, to small businesses and microbusinesses, among other requirements.

This bill would require each state agency, in order to encourage small business participation in new contracts over ~~\$250,000~~ *\$500,000* for the construction, alternation, demolition, repair or improvement of the state's infrastructure that is funded with proceeds from the federal Infrastructure Investment and Jobs Act (Act), to establish a 25% small business participation goal in all contracts that the agency finances with

these proceeds. The bill would prescribe federal enactments that are deemed to be federal revenues from the Act for purposes of these provisions. The bill would require a state agency to notify the agency’s small business liaison beginning April 1, 2023, of any anticipated contracting opportunities that will be paid with funding from the Act during the 12 months following that date and require its small business liaison to provide information to small businesses regarding available training and technical assistance that could assist the business in identifying, understanding, and bidding on contracts for projects funded through the agency with funding from the Act, as specified.

This bill would exempt a state agency from these requirements with regard to funding from the Act if *the head of the state agency determines that federal requirements preclude small business procurement participation, as specified in these provisions, the bid issued by the state agency is required to include a disadvantaged business enterprise procurement participation requirement*, or if compliance with these provisions would make the state’s application for a competitive *federal* program less competitive than other eligible applicants, as provided. *The bill would require the state agency to report these determinations to the Director of General Services in a manner to be determined by the department, in each instance when a determination is made.* The bill would require each state agency that has awarded any contract financed with funding from the act to report to the Director of General Services statistics comparing the small business and microbusiness participation dollars for contracts funded by the Act to the total contract dollars funded by the Act, as provided.

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 14838.1 of the Government Code is
- 2 amended to read:
- 3 14838.1. (a) In order to encourage the participation of small
- 4 businesses in the construction, alteration, demolition, repair, or
- 5 improvement, of the state’s infrastructure, as provided in the
- 6 infrastructure-related bond acts of 2006, each state agency awarding
- 7 contracts financed with the proceeds of these bonds shall do all of
- 8 the following:

1 (1) Establish a 25 percent small business participation goal in
2 all contracts it financed with the proceeds of the
3 infrastructure-related bond acts of 2006.

4 (2) Advertise all upcoming opportunities to bid on contracts for
5 projects funded by the infrastructure-related bond acts of 2006,
6 described in subdivision (d), in the California State Contracts
7 Register and include in the advertisement an ~~Internet~~ *internet* link
8 to information for prospective bidders, including, but not limited
9 to, general bidding procedures and how to properly prepare a bid
10 for those contracts.

11 (3) Provide information to California small businesses regarding
12 training and technical assistance that is available to assist these
13 small businesses in understanding and bidding on contracts for
14 projects funded by the infrastructure-related bond acts of 2006,
15 described in subdivision (d).

16 (b) In order to encourage the participation of small businesses
17 in the construction, alternation, demolition, repair, or improvement,
18 of the state's infrastructure, as provided in the Infrastructure
19 Investment and Jobs Act (Public Law 117-58), as described in
20 subdivision (e), each state agency awarding new contracts over
21 ~~two hundred and fifty thousand dollars (\$250,000)~~ *five hundred*
22 *thousand dollars (\$500,000)* that are financed, in whole or in part,
23 with the proceeds of the act, shall do all of the following:

24 (1) Establish a 25 percent small business participation goal in
25 all contracts that it finances, in whole or in part, with these federal
26 funds.

27 (2) Beginning April 1, 2023, notify the agency's small business
28 liaison, designated pursuant to Section 14846, of any anticipated
29 contracting opportunities that will be paid, in whole or in part,
30 with funding from the Infrastructure Investment and Jobs Act
31 during the 12 months following April 1, 2023.

32 (3) The agency small business liaison shall provide information
33 to California small businesses regarding training and technical
34 assistance that is available to assist them in identifying,
35 understanding, and bidding on contracts for projects funded through
36 the agency with Infrastructure Investment and Jobs Act funding,
37 as described in subdivision (e).

38 (c) The requirements of subdivision (b) do not apply to funding
39 from the Infrastructure Investment and Jobs Act if ~~federal~~ *the head*
40 *of the state agency makes one of the following determinations:*

1 (1) *Federal* requirements preclude small business procurement
2 participation as required by this ~~section or, in~~ *section*.

3 (2) *The bid issued by the state agency is required to include a*
4 *disadvantaged business enterprise procurement participation*
5 *requirement.*

6 (3) *In the case of competitively awarded ~~funding,~~ funding from*
7 *the federal government, if compliance with the requirements of*
8 *this section would make the state’s application for a competitive*
9 *program less competitive than other eligible applicants. ~~Upon~~*
10 *request by a state agency, the department shall determine whether*
11 *compliance with the requirements of this section would make the*
12 *state’s application for a competitive program less competitive than*
13 *other eligible applicants.*

14 (d) For purposes of this section, all of the following measures
15 are deemed to be the infrastructure-related bond acts of 2006:

16 (1) The Highway Safety, Traffic Reduction, Air Quality, and
17 Port Security Bond Act of 2006 (Chapter 12.49 (commencing with
18 Section 8879.20) of Division 1 of the Government Code).

19 (2) The Housing and Emergency Shelter Trust Fund Act of 2006
20 (Part 12 (commencing with Section 53540) of Division 31 of the
21 Health and Safety Code).

22 (3) The Kindergarten-University Public Education Facilities
23 Bond Act of 2006 (Part 69 (commencing with Section 101000) of
24 the Education Code).

25 (4) The Disaster Preparedness and Flood Prevention Bond Act
26 of 2006 (Chapter 1.699 (commencing with Section 5096.800) of
27 Division 5 of the Public Resources Code).

28 (5) The Safe Drinking Water, Water Quality and Supply, Flood
29 Control, River and Coastal Protection Bond Act of 2006 (Division
30 43 (commencing with Section 75001) of the Public Resources
31 Code).

32 (e) For purposes of this section, funding awarded to the state
33 from the following subtitles, titles, and divisions of the
34 Infrastructure Investment and Jobs Act shall be deemed to be
35 federal revenues:

36 (1) *Division A, the Surface Transportation Reauthorization Act*
37 *of 2021 (23 U.S.C. Sec. 101 et seq.).*

38 (2) *Division B, the Surface Transportation Investment Act of*
39 *2021 (49 U.S.C. Sec. 101 et seq.).*

- 1 (3) *Division E, the Drinking Water and Wastewater*
2 *Infrastructure Act of 2021 (33 U.S.C. Sec. 1251 et seq.).*
- 3 (4) *Division F, Broadband (47 U.S.C. Sec. 1701 et seq.).*
4 (1)
- 5 (5) Title IX of Division G, the Build America, Buy America
6 Act (41 U.S.C. Sec. 8301 et seq.).
- 7 ~~(2) Title VI of Division G, the Cyber Response and Recovery~~
8 ~~Act (6 U.S.C. 651 et seq.).~~
- 9 ~~(3) Title I of Division F, the Digital Equity Act of 2021 (47~~
10 ~~U.S.C. 1701 et seq.).~~
- 11 ~~(4) Division E, the Drinking Water and Wastewater~~
12 ~~Infrastructure Act of 2021 (33 U.S.C. 1251 et seq.).~~
- 13 ~~(5) Division J, the Infrastructure Investments and Jobs Act.~~
- 14 ~~(6) Subtitle C of Part II of Title IX of Division G, the Make~~
15 ~~PPE in America Act.~~
- 16 ~~(7) Title II of Division B, the Passenger Rail Expansion and~~
17 ~~Rail Safety Act of 2021 (49 U.S.C. 20101 et seq.).~~
- 18 ~~(8) Title III of Division G, the Repairing Existing Public Land~~
19 ~~by Adding Necessary Trees Act (16 U.S.C. 1600 et seq.).~~
- 20 ~~(9) Title VI of Division G, the State and Local Cybersecurity~~
21 ~~Improvement Act (6 U.S.C. 101 et seq.).~~
- 22 ~~(10) Division B, the Surface Transportation Investment Act of~~
23 ~~2021 (49 U.S.C. 101 et seq.).~~
- 24 ~~(11) Division A, the Surface Transportation Reauthorization~~
25 ~~Act of 2021 (23 U.S.C. 101 et seq.).~~
- 26 ~~(12) Title VI of Division F, the Telecommunications Skilled~~
27 ~~Workforce Act (47 U.S.C. 301 et seq.).~~
- 28 ~~(13) Title II of Division G, the Wildland Fire Mitigation and~~
29 ~~Management Commission Act of 2021.~~
- 30 (f) For purposes of this section, all of the following shall apply:
- 31 (1) “Small business” has the same meaning as set forth in
32 subdivision (d) of Section 14837.
- 33 (2) “State agency” includes each agency provided for in Section
34 12800 and each state entity in Section 10335.7 of the Public
35 Contract Code in which the head of the agency is appointed by the
36 Governor.
- 37 (g) This section does not require the expenditure of the proceeds
38 of the sale of the bonds described in this section, except as
39 permitted by the measure authorizing the issuance of the bond.

1 (h) (1) On or before August 1, 2009, and annually thereafter,
2 each state agency that has awarded any contract financed with the
3 proceeds of the infrastructure-related bond acts of 2006 or the
4 Infrastructure Investment and Jobs Act in the previous fiscal year
5 shall report to the Director of General Services statistics comparing
6 the small business and microbusiness participation dollars for
7 contracts funded by these bonds or federal dollars to the total
8 contract dollars for contracts funded by these bonds or federal
9 dollars. ~~¶~~

10 (2) *If* an agency did not meet its participation goal, then the
11 agency shall include in its report a plan of action to meet its
12 participation goal during the current fiscal year. These reporting
13 requirements do not supersede any other reporting requirements
14 required of these funds.

15 (3) *In each instance that the head of the state agency makes a*
16 *determination pursuant to subdivision (c), the state agency shall*
17 *report this determination to the Director of General Services in a*
18 *manner to be determined by the department.*