

CALIFORNIA CODES
PUBLIC **CONTRACT CODE**
SECTION **10115-10115.15**

10115. (a) The Legislature finds and declares all of the following:

(1) The essence of the American economic system of private enterprise is free competition. Only through full and free competition can free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment be assured. The preservation and expansion of that competition is basic to the economic well-being of this state and that well-being cannot be realized unless the actual and potential capacity of minority, women, and disabled veteran business enterprises is encouraged and developed. Therefore, it is the declared policy of the state to aid the interests of minority, women, and disabled veteran business enterprises in order to preserve reasonable and just prices and a free competitive enterprise, to ensure that a fair proportion of the total number of contracts or subcontracts for commodities, supplies, technology, property, and services are awarded to minority, women, and disabled veteran business enterprises, and to maintain and strengthen the overall economy of the state.

(2) The opportunity for full participation in our free enterprise system by minority, women, and disabled veteran business enterprises is essential if this state is to attain social and economic equality for those businesses and improve the functioning of the state economy.

(3) State agencies which have established short- and long-range minority, women, and disabled veteran participation goals are awarding 23 percent or more of their contracts to these business enterprises.

(4) It is in the state's interest to expeditiously improve the economically disadvantaged position of minority, women, and disabled veteran business enterprises.

(5) The economic position of these businesses can be improved by providing long-range substantial goals for procurement by state agencies of commodities, professional services, and construction work from minority, women, and disabled veteran businesses.

(6) Procurement by state agencies of goods and services from these businesses also benefits the state agencies and the citizens of the state by encouraging the expansion of the number of vendors for procurements, thereby encouraging competition among the vendors and promoting economic efficiency in the process.

(b) It is the purpose of this article to do all of the following:

(1) Encourage greater economic opportunity for minority, women, and disabled veteran business enterprises.

(2) Promote competition among state agencies in order to enhance long-term economic efficiency in the procurement of construction, commodities, and professional services contracts.

(3) Clarify and expand the program for the procurement by state agencies of commodities, professional services, and construction work from minority, women, and disabled veteran business enterprises.

(c) Notwithstanding any other provision of law, contracts awarded by any state agency, department, officer, or other state governmental entity for construction, professional services (except those subject to Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government **Code**), materials, supplies, equipment, alteration, repair, or improvement shall have statewide participation goals of not less than 15 percent for minority business enterprises, not less than 5 percent for women business enterprises and 3 percent for disabled veteran business enterprises. These goals apply to the overall dollar amount expended each year by the awarding department, as defined by Section **10115.1**, pursuant to this article.

10115.1. As used in this article, the following definitions apply:

(a) "Awarding department" means any state agency, department, governmental entity, or other officer or entity empowered by law to enter into contracts on behalf of the State of California.

(b) "**Contract**" includes any agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a **contract**, franchise, concession, or lease granted, let, or awarded for and on behalf of the State of California.

(c) "Contractor" means any person or persons, regardless of race, color, sex, ethnic origin or ancestry, or any firm, partnership, corporation, or combination thereof, whether or not a minority or women business enterprise, who submits a bid and enters into a **contract** with a representative of a state agency, department, governmental entity, or other officer empowered by law to enter into contracts on behalf of the State of California.

(d) "Minority," for purposes of this section, means a citizen or lawful permanent resident of the United States who is an ethnic person of color and who is: Black (a person having origins in any of the Black racial groups of Africa); Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Native American (an American Indian, Eskimo, Aleut, or Native Hawaiian); Pacific-Asian (a person whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, or the United States Trust Territories of the Pacific including the Northern Marianas); Asian-Indian (a person whose origins are from India, Pakistan, or Bangladesh); or any other group of natural persons identified as minorities in the respective project specifications of an awarding department or participating local agency.

(e) "Minority business enterprise" means a business concern that meets all of the following criteria:

(1) The business is an individual proprietorship, partnership, corporation, or joint venture at least 51 percent owned by one or more minorities or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more minorities.

(2) A business whose management and daily operations are controlled by one or more minorities who own the business.

(3) A business concern with its home office located in the United States which is not a branch or subsidiary of a foreign corporation, firm, or other business.

(f) "Women business enterprise" means a business concern that meets all of the following criteria:

(1) The business is an individual proprietorship, partnership, corporation, or joint venture at least 51 percent owned by one or more women or, in the case of any business whose stock is publicly held, at least 51 percent of the stock is owned by one or more women.

(2) A business whose management and daily operations are controlled by one or more women who own the business.

(3) A business concern with its home office located in the United States which is not a branch or subsidiary of a foreign corporation, firm, or other business.

(g) "Goal" means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.

10115.2. (a) In awarding contracts to the lowest responsible bidder, the awarding department shall consider the efforts of a bidder to meet minority business enterprise, women business enterprise, and disabled veteran business enterprise goals set forth in this article. The awarding department shall award the **contract** to the lowest responsible bidder meeting or making good faith efforts to meet these goals.

(b) A bidder shall be deemed to have made good faith efforts upon submittal, within time limits specified by the awarding department, of documentary evidence that all of the following actions were taken:

(1) Contact was made with the awarding department to identify minority, women, and disabled veteran business enterprises.

(2) Contact was made with other state and federal agencies, and with local minority, women, and disabled veteran business enterprise organizations to identify minority, women, and disabled veteran business enterprises.

(3) Advertising was published in trade papers and papers focusing on minority, women, and disabled veteran business enterprises, unless time limits imposed by the awarding department do not permit that advertising.

(4) Invitations to bid were submitted to potential minority, women, and disabled veteran business enterprise contractors.

(5) Available minority, women, and disabled veteran business enterprises were considered.

10115.3. (a) The awarding department shall establish a method of monitoring adherence to the goals specified in this article.

(b) The awarding department shall adopt rules and regulations for the purpose of implementing this article. Emergency regulations consistent with this section may be adopted.

10115.4. In implementing this article, the awarding department shall utilize existing resources such as the Office of Small and Minority Business, the Minority Business Development Agency, and the

Small Business Administration.

10115.6. Notwithstanding any other provision of this article, the failure of an awarding department to meet the goals established under this article shall not affect the validity or enforceability of any **contract** or any bonds, notes, or other obligations issued by the awarding department to provide for the payment of any **contract** subject to this article.

10115.7. (a) Nothing in this article shall be construed to authorize any awarding department to discriminate in the awarding of any **contract** on the basis of race, color, sex, ethnic origin, or ancestry.

(b) Nothing in this article shall be construed to authorize any contractor to discriminate in the solicitation or acceptance of bids for subcontracting, or for materials or equipment, on the basis of race, color, sex, ethnic origin, or ancestry.

10115.8. If any provision of this article or the application thereof to any person or circumstances is held invalid, that invalidity shall not affect other provisions or applications of the article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

10115.9. A limited liability company may be certified as a disabled veteran business enterprise pursuant to this article if the limited liability company is wholly owned by one or more disabled veterans.

10115.10. (a) It shall be unlawful for a person or firm to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, acceptance or certification as a minority, women, or disabled veteran business enterprise, for the purposes of this article.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the acceptance or certification or denial of acceptance or certification of any entity as a minority, women, or disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity which has requested acceptance or certification as a minority, women, or disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person or firm in fraudulently

obtaining or attempting to obtain, public moneys to which the person is not entitled under this article.

(5) Establish, or cooperate in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to (4), inclusive. Any person or firm who violates this paragraph is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed fifty thousand dollars (\$50,000) for the first violation, and a civil penalty not to exceed two hundred thousand dollars (\$200,000) for each additional, or subsequent violation.

(6) This section shall not apply to minority and women business enterprise programs conducted by public utility companies pursuant to the California Public Utilities Commission's General Order 156.

(b) Any person who violates paragraphs (1) to (4), inclusive, of subdivision (a) is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for the first violation, and a civil penalty not to exceed twenty thousand dollars (\$20,000) for each additional or subsequent violation.

(c) Any person or firm that violates subdivision (a) shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as either a contractor, subcontractor, or supplier in, any state **contract** or project for a period of not less than 30 days nor more than one year. However, for an additional or subsequent violation the period of suspension shall be extended for a period of up to three years. Any person or firm that fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Office of Small and Minority Business. The office shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The office shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any **contract** with any person or firm suspended for violating this section during the period of the person's or firm's suspension. No awarding department shall award a **contract** to any contractor utilizing the services of any person or firm as a subcontractor suspended for violating this section during the period of the person's or firm's suspension.

(g) The awarding department shall check the central listing provided by the office to verify that the person, firm, or contractor to whom the **contract** is being awarded, or any person or firm being utilized as a subcontractor by that person, firm, or contractor, is not under suspension for violating this section.

10115.11. (a) Notwithstanding any other provision of this article, statewide participation goals for contracts let by the Department of Corrections shall be exclusive of inmate day labor contracts.

(b) The goals established in this article shall also apply to the overall dollar amount expended each year on contracts let by the California Department of Corrections for the purposes of services, maintenance, and supplies excluding contracts for services for inmate

medical needs.

10115.12. (a) Any awarding department taking bids in connection with the award of any **contract** shall 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:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise 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 minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). Except in cases of emergency where a **contract** is necessary for the immediate preservation of the public health, welfare, or safety, or protection of state property, the prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, or disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113.

(d) As used in this section, "**contract**" does not include a **contract** negotiated pursuant to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government **Code**.

10115.13. Notwithstanding any other provision of law, contracts awarded by any state agency, department, officer, or other state governmental entity for the purchase of general public advertisements shall have statewide participation goals of not less than 15 percent for minority business enterprises, not less than five percent for women business enterprises, and three percent for disabled veteran business enterprises. These goals apply to the overall dollar amount expended each year by the awarding state agency, department, offices, or other state governmental entity.

10115.15. (a) Notwithstanding Section **10115.2**, when awarding contracts for materials, supplies, or equipment, including electronic data processing goods and services, an awarding department shall accept the submission by a bidder of a minority, women, and disabled veteran business enterprise utilization plan that has been approved prior to the solicitation due date by the Department of General Services. A business utilization plan shall be considered approved by the Department of General Services as of the date submitted to the department so long as the plan meets the minimum criteria

established in paragraphs (1) to (12), inclusive, and shall be valid for a period of one year, unless the department has audited the utilization plan, as authorized under subdivision (b), and disapproves it for reasons specified under subdivision (c). The decision of whether to establish a minority, women, and disabled veteran business enterprise utilization plan shall be at the option of the vendor. If a bidder cites an approved utilization plan in response to the minority, women, and disabled veteran business enterprise participation requirements of a solicitation that calls for 15 percent minority-owned, 5 percent women-owned, and 3 percent disabled veteran-owned business participation, then that utilization plan shall be considered responsive to the participation goals of the solicitation document. If a solicitation specifies higher participation goals than those in the bidder's utilization plan, the bidder shall meet the goals in the solicitation or make a good-faith effort to do so. At a minimum, the utilization plan shall include the following information:

(1) A statement of the vendor's minority, women, and disabled veteran business enterprise utilization plan, including the primary objectives of the utilization plan.

(2) An explanation showing sufficient business reasons why the vendor did not meet minority, women, and disabled veteran business enterprise participation goals set forth in the vendor's minority, women, and disabled veteran business utilization plan submitted to, and approved by, the Department of General Services in the previous year, if applicable. Further, if the vendor did not meet the minority, women, and disabled veteran business participation goals in the previous year, the vendor shall also identify remedial steps it will take to meet the goals in the current utilization plan.

(3) A statement of the vendor's minority, women, and disabled veteran business utilization goals for the succeeding year. At a minimum, these utilization goals shall be equal to the statewide participation goals set forth in subdivision (c) of Section **10115**.

(4) Estimated total dollars to be subcontracted by the vendor for sales within the United States for the succeeding year.

(5) Estimated total dollars to be subcontracted by the vendor for sales within the State of California for the succeeding year.

(6) Total dollars expressed as a percentage of the amount estimated pursuant to paragraph (4), intended to be subcontracted with each of the following:

(A) Minority business enterprises.

(B) Women business enterprises.

(7) Total dollars, expressed as a percentage of the amount estimated pursuant to paragraph (5), intended to be subcontracted with disabled veteran-owned business enterprises.

(8) A representative listing of the products and services that the vendor anticipates subcontracting, including an identification of the types of subcontracting planned for minority, women, and disabled veteran business enterprises.

(9) The name of the individual employed by the vendor who will administer the vendor's utilization plan, including a description of the duties of the individual.

(10) A description of the efforts that the vendor will undertake to ensure that minority, women, and disabled veteran business enterprises will have an equitable opportunity to compete for contracts.

(11) A listing of the records and reports that the vendor will

maintain to demonstrate the practices and procedures that have been adopted to comply with the requirements and goals of the utilization plan.

(12) Affirmation that the vendor met the statewide minority, women, and disabled veteran business enterprise utilization goals for the previous year, if applicable.

(b) The Department of General Services shall conduct random audits of the submitted utilization plans to determine compliance with this article, and shall retain on file all submitted utilization plans for auditing purposes. During any audit of a submitted utilization plan, the Department of General Services may ask a vendor to submit a list of all the minority, women, and disabled veteran business enterprises included as subcontractors in the vendor's plan for the previous year. This information shall remain confidential. Nothing in this section shall be construed to require the Department of General Services to audit all of the minority, women, and disabled veteran business enterprise utilization plans submitted by individual vendors. The Department of General Services may establish appropriate fees to cover the actual costs of conducting random audits and retaining on file all submitted plans.

(c) (1) At any time, the Department of General Services may disapprove a vendor's minority, women, and disabled veteran business enterprise utilization plan for any of the following reasons:

(A) The utilization plan fails to evidence a vendor's intention to comply fully with the statewide minority, women, and disabled veteran business enterprise goals for the succeeding year, as indicated by failure of the utilization plan to contain the information specified in subdivision (a).

(B) The utilization plan fails to evidence sufficient business reasons for failure to achieve the minority, women, and disabled veteran business enterprise goals set forth in a utilization plan submitted in the previous year, if applicable.

(C) The utilization plan fails to evidence sufficient remedial steps the vendor will take if the vendor did not meet the minority, women, and disabled veteran business participation goals in the previous year, if applicable.

(2) If a vendor's utilization plan is disapproved, the vendor may not submit a new utilization plan to the department for a period of one year from the date of disapproval. Prior to disapproval of a vendor's utilization plan, the vendor shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(3) A vendor that submits a minority, women, and disabled veteran business utilization plan that is approved by the Department of General Services, and that is subsequently awarded a **contract** to which the vendor would not otherwise have been entitled, and who fails to evidence intention to fully comply with the minority, women, and disabled veteran business enterprise goals in the utilization plan, or fails to evidence sufficient business reasons for failing to achieve the minority, women, and disabled veteran business enterprise goals set forth in the utilization plan, shall:

(A) Pay to the state any difference between the **contract** amount and what the state's cost would have been if the **contract** had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the **contract** involved.

(C) Be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.

Prior to imposition of any sanction under this chapter, the contractor or vendor shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.