

AMENDED IN ASSEMBLY MARCH 19, 2024

CALIFORNIA LEGISLATURE—2023–24 REGULAR SESSION

ASSEMBLY BILL

No. 2262

**Introduced by Assembly ~~Member Reyes~~ Members *Reyes and
Stephanie Nguyen***

February 8, 2024

An act ~~relating to small business~~; to amend Section 12098.3 of the Government Code, and to add Chapter 2.7 (commencing with Section 22060) to Part 3 of Division 2 of the Public Contract Code, relating to small business.

LEGISLATIVE COUNSEL'S DIGEST

AB 2262, as amended, Reyes. Small business.

Existing law creates within the Governor's Office of Business and Economic Development the Office of Small Business Advocate, which is led by the Small Business Advocate, to advocate the causes of small business and to provide small businesses with the information they need to survive in the marketplace. Existing law requires the advocate to, among other duties, collaborate with the Office of Small Business and Disabled Veteran Business Enterprise Services in their activities under the Small Business Procurement and Contract Act, including promoting small business certification.

This bill would also require the advocate to collaborate with local agencies on the development and implementation of local strategies to increase small business participation in local procurement opportunities, as specified. In this connection, the bill would authorize a local agency, as defined, to establish a Small Business Utilization Program (SBUP) to increase small businesses' participation in local agency procurement opportunities. The bill would require an SBUP, to facilitate the

participation of small businesses in the provision of goods, information technology, and services to the local agency, to establish a small business certification process. As part of this process, the bill would require the SBUP, to the extent feasible, to include all of specified criteria, including, among other things, a minimum goal of 25% procurement participation for small businesses certification.

The bill would authorize a local agency to submit information on its small business procurement participation to the Office of Small Business Advocate, including progress toward meeting utilization goals. The bill would require the Office of Small Business Advocate, subject to funding being available, and upon appropriation by the Legislature for these purposes, to issue its first data call to local agencies on or before November 15, 2026, as specified. The bill would include related legislative findings.

~~Existing law states that it is in the public interest to aid, counsel, assist, and protect, insofar as is possible, the interests of small business concerns in order to preserve free competitive enterprise and maintain a healthy state economy.~~

~~This bill would express the intent of the Legislature to enact legislation to increase small business utilization by public entities.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 *SECTION 1. Section 12098.3 of the Government Code is*
- 2 *amended to read:*
- 3 12098.3. (a) The Small Business Advocate shall be appointed
- 4 by, and shall serve at the pleasure of, the Governor.
- 5 (b) The Governor shall appoint the employees who are needed
- 6 to accomplish the purposes of this article.
- 7 (c) The duties and functions of the advocate shall include all of
- 8 the following:
- 9 (1) Serve as the principal advocate in the state on behalf of small
- 10 businesses, including, but not limited to, advisory participation in
- 11 the consideration of all legislation and administrative regulations
- 12 that affect small businesses, and advocacy on state policy and
- 13 programs related to small businesses.

1 (2) Represent the views and interests of small businesses before
2 other state agencies whose policies and activities may affect small
3 business.

4 (3) Enlist the cooperation and assistance of public and private
5 agencies, businesses, and other organizations in disseminating
6 information about the programs and services provided by state
7 government that are of benefit to small businesses, and information
8 on how small businesses can participate in, or make use of, those
9 programs and services.

10 (4) Consult with experts and authorities in the fields of small
11 business investment, venture capital investment, and commercial
12 banking and other comparable financial institutions involved in
13 the financing of business, and with individuals with regulatory,
14 legal, economic, or financial expertise, including members of the
15 academic community, and individuals who generally represent the
16 public interest.

17 (5) Seek the assistance and cooperation of all state agencies and
18 departments providing services to, or affecting, small business,
19 including the small business liaison designated pursuant to Section
20 11148.5, to ensure coordination of state efforts. The advocate shall
21 fulfill this duty by, among other activities, maintaining, publicizing,
22 and distributing an annual list of persons serving as small business
23 liaisons throughout the state.

24 (6) Receive and respond to complaints from small businesses
25 concerning the actions of state agencies and the operative effects
26 of state laws and regulations adversely affecting those businesses.

27 (7) Counsel small businesses on how to resolve questions and
28 problems concerning the relationship of small business to state
29 government.

30 (8) Collaborate with the Office of Small Business and Disabled
31 Veteran Business Enterprise Services in their activities under the
32 Small Business Procurement and Contract Act (Chapter 6.5
33 (commencing with Section 14835) of Part 5.5), including, but not
34 limited to, promoting small business certification and undertaking
35 reasonable means to assist state agencies in improving small
36 business participation. Among other activities, the advocate shall
37 maintain, publicize, and distribute an annual list of persons serving
38 as a small business advocate, designated pursuant to Section 14846,
39 throughout state government.

(9) Collaborate with the California Disabled Veteran Enterprise Program Advocate, appointed pursuant to Section 999.11 of the Military and Veterans Code, regarding the implementation of the California Disabled Veteran Business Enterprise Program (Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code), including, but not limited to, promoting disabled veteran business enterprise certification to veteran entrepreneurs and veteran-owned small businesses and undertaking reasonable means to assist state agencies in improving small business and disabled business enterprise procurement participation. The advocate shall fulfill this duty by, among other activities, publicizing the annual list of persons serving as a Disabled Veteran Business Enterprise Program Advocate, designated pursuant to Section 999.12 of the Military and Veterans Code, throughout the state.

(10) *Collaborate with local agencies on the development and implementation of local strategies to increase small business participation in local procurement opportunities, including facilitating discussions and sharing examples, when known and available, of small business utilization strategies, technical assistance and outreach models, reciprocity agreements, and structures of preferences and other incentives.*

SEC. 2. Chapter 2.7 (commencing with Section 22060) is added to Part 3 of Division 2 of the Public Contract Code, to read:

CHAPTER 2.7. SMALL BUSINESS UTILIZATION PROGRAM

22060. *This chapter shall be known and may be cited as the Small Business Utilization Act.*

Article 1. Legislative Findings and Purpose

22061. *The Legislature finds and declares all of the following:*

(a) *Small businesses play a crucial role in the state economy and contribute significantly to job creation and economic growth.*

(b) *Establishing a Small Business Utilization Program will promote the inclusion and participation of small businesses in government contracts, fostering economic development.*

1 (c) (1) *It serves a public purpose and is of benefit to the state*
2 *to promote and facilitate the fullest possible participation by all*
3 *citizens.*

4 (2) *It serves the public interest to ensure fair and equal*
5 *opportunities for small businesses to compete for and perform*
6 *local contracts.*

7
8 Article 2. Definitions
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10 22062. *For the purpose of this chapter, the following terms*
11 *apply:*

12 (a) *“Commercially useful function” means:*

13 (1) *A contractor is deemed to perform a commercially useful*
14 *function if the contractor, including a subcontractor, does all of*
15 *the following:*

16 (A) *Is responsible for the execution of a distinct element of the*
17 *work of the contract.*

18 (B) *Carries out its obligation by actually performing, managing,*
19 *or supervising the work involved.*

20 (C) *Performs work that is normal for its business services and*
21 *functions.*

22 (D) *Is responsible, with respect to products, inventories,*
23 *materials, and supplies required for the contract, for negotiating*
24 *price, determining quality and quantity, ordering, installing, if*
25 *applicable, and making payment.*

26 (E) *Is not further subcontracting a portion of the work that is*
27 *greater than that expected to be subcontracted by normal industry*
28 *practices.*

29 (2) *A contractor or subcontractor shall not be considered to*
30 *perform a commercially useful function if the contractor’s or*
31 *subcontractor’s role is limited to that of an extra participant in a*
32 *transaction, contract, or project through which funds are passed*
33 *in order to obtain the appearance of a small business, a disabled*
34 *veteran business, or a social enterprise.*

35 (b) *“Contract” or “procurement” means the procurement of*
36 *goods, information technology, or delivery of services.*

37 (c) *“Local agency” means a city, county, or city and county,*
38 *including charter cities and charter counties.*

Article 3. *Small Business Utilization Program*

22063. (a) *A local agency may establish a Small Business Utilization Program (SBUP) to increase small businesses' participation in local agency procurement opportunities.*

(b) *In order to facilitate the participation of small businesses, including microbusinesses, in the provision of goods, information technology, and services to the local agency, the SBUP shall, to the extent feasible, include all of the following:*

(1) *A small business certification process, including certification criteria, that shall, at minimum, include each small business certification identified in Section 14837 of the Government Code. In developing the process and certification criteria, the local agency shall consider reciprocity with the state and other local agencies. Nothing in this chapter prohibits a local agency from also adopting a local small business certification.*

(2) *A minimum goal of 25 percent procurement participation for small businesses, including microbusinesses, in local agency contracts.*

(3) *A small business preference and a nonsmall business preference for bidders that provide for small business and microbusiness subcontractor participation in the award of contracts for goods, information technology, and services. These small businesses are required to serve a commercially useful function in the completion of the contract.*

(4) *Policies and strategies related to training, technical assistance, and resources available to small businesses to enhance their ability to compete for local agency contracts.*

(5) *Policies and strategies that provide specific considerations to be taken in designing and issuing solicitations to increase small business and microbusiness procurement opportunities while also meeting local agency needs and available funding, including, but not limited to:*

(A) *Determining when appropriate and how to unbundle larger contracts to allow smaller ones.*

(B) *Reducing the minimum years of experience a business must have to submit a fully compliant bid.*

(C) *Reducing the level of inventory normally required.*

(D) *Streamlining the bidding process.*

1 (6) *Policies and strategies to assist departments that fail to meet*
2 *the small business participation goal.*

3 (7) *Baseline data on local procurement activities and methods*
4 *that will be used to monitor and report on the participation of*
5 *small businesses in local agency contracts.*

6 (8) *A process for a nonsmall business prime that receives a*
7 *preference pursuant to this chapter to verify all of the following:*

8 (A) *The small business subcontractors identified in the bid*
9 *package have been notified that the prime has been awarded the*
10 *contract.*

11 (B) *The small business subcontractors identified in the bid*
12 *package have been paid in full.*

13 (C) *The amount paid, in the aggregate, to small business*
14 *subcontractors meets or exceeds the amount committed to in the*
15 *bid and as modified by the local agency contract.*

16 (D) *The small business subcontractors serves a commercially*
17 *useful function.*

18 (9) *A process for a nonsmall business that receives a preference*
19 *pursuant to the chapter to replace the small business subcontractor*
20 *identified in the bid for another qualified small business*
21 *subcontractor after the contract has been awarded. This shall*
22 *include a requirement for approval by the local agency and the*
23 *notification and payment of costs already incurred by the small*
24 *business subcontractors named in the bid.*

25 (10) *To the extent feasible and consistent with state law,*
26 *incentives to small businesses in the procurement process,*
27 *including, but not limited to, set-asides, subcontracting*
28 *opportunities, and mandatory small business participation in*
29 *certain local agency contracts for qualified small businesses.*

30 (11) *Policies and strategies that support the local agency in*
31 *continuously expanding the pool of small businesses and*
32 *microbusinesses participating in the local agency contracts.*

33 (12) *A requirement for the local agency to review the Small*
34 *Business Utilization Plan and update it as needed, but not less*
35 *than every four years.*

36
37 Article 4. Reporting Requirements

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39 22065. (a) *A local agency may submit information on their*
40 *small business procurement participation to the Office of Small*

1 *Business Advocate, including progress toward meeting utilization*
2 *goals.*

3 *(b) Subject to funding being available, and upon appropriation*
4 *by the Legislature for purposes of this chapter, the Office of Small*
5 *Business Advocate shall issue its first data call to local agencies*
6 *on or before November 15, 2026. The data call shall cover*
7 *contracting activities during the prior fiscal year.*

8 *(c) Information from the data call shall include the total number*
9 *and dollar amount of contracting activities entered into by the*
10 *local agency during the prior fiscal year in dollars and percentages*
11 *compared to the baseline year identified in the Small Business*
12 *Utilization Plan or set by the local agency through another means.*
13 *The report may also summarize any substantive changes made to*
14 *the Small Business Utilization Plan, if one has been adopted,*
15 *during the reporting year.*

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17 *Article 5. Effective Date*

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19 *22067. This chapter shall become effective on January 1, 2025.*

20 ~~SECTION 1.—It is the intent of the Legislature to enact~~
21 ~~legislation to increase small business utilization by public entities.~~

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24 **REVISIONS:**

25 **Heading—Line 1.**

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