

STATUTES OF 2004
EXCERPTS
**California Codes
Relating to
State Acquisitions**

SEPTEMBER 2004



Department of General Services
Procurement Division
P.O. Box 942804
Sacramento, CA 94204

Street address: 707 3rd Street
West Sacramento CA 95605

Questions regarding the general content of this publication can be directed to the
Legislative Services Unit by telephone at (916) 375-4347 or email at
joyce.gibson@dgs.ca.gov.

Arnold Schwarzenegger, Governor

**Fred Aguiar, Secretary
State and Consumer Services Agency**

**Ron Joseph, Director
Department of General Services**

PROCUREMENT DIVISION

Rita Hamilton, Deputy Director

Janice King, Assistant Deputy Director

Joyce Gibson, Legislative Services Unit

Excerpts compiled by Joyce Gibson

Cover by Mary Purvis

DISCLAIMER:

Excerpts is intended as a reference summary of code sections and regulations that are relevant to the Procurement Division. If any discrepancies are found between this booklet and the actual statutory or regulatory language, the latter shall prevail.

Revised September 2004

TABLE OF CONTENTS

I. PUBLIC CONTRACT CODE

<u>TITLE</u>	<u>SECTION #</u>	<u>PAGE #</u>
Purpose and Preliminary Matters	100	PCC-1
Definitions	1102	PCC-1
Electronic Transmissions	1600-1601	PCC-1
Certification of MWBEs	2050-2057	PCC-1
Preference for Materials (food purchases)	3410	PCC-6
Awarding of Contracts-Ineligible Contractors	6100-6109	PCC-6
Contract Clauses	7103	PCC-12
Minority and Women Business Participation Goals	10115-10115.16	PCC-13
Ineligibility to Contract	10285-10285.5	PCC-19
Taxpayer and Shareholder Protection Act of 2003	10286-10286.1	PCC-20
State Acquisition of Goods and Services	10290-10474	PCC-23
Definitions	10290	PCC-23
Approval of Contracts	10295-10299	PCC-24
Competitive Bidding/Other Acquisition Procedures	10300-10334	PCC-28
Contracts for Services	10335-10381	PCC-35
Federal Surplus Personal Property	10383-10383.8	PCC-46
State Surplus Personal Property	10389.1	PCC-47
Recycled Oil Markets	10405-10409	PCC-47
Conflict of Interest	10410-10412	PCC-48
Remedies and Penalties	10420-10426	PCC-49
Exemptions	10430	PCC-50
Minority Business Participation	10470-10474	PCC-50
Acq. of IT and Telecommunications Goods/Services	12100-12121	PCC-52
Alternative Protest Pilot Project	12125-12130	PCC-57
State Assistance for Recycling Markets	12150-12226	PCC-59
General Provisions	12150-12159	PCC-59
Recycled Paper Products	12160-12169	PCC-61
Recycled Fluids, Paints and Solvents	12170	PCC-65
Compost and Co-compost Products	12180-12185	PCC-66
Recycled Materials, Goods and Supplies	12200-12226	PCC-67
Recycled Product Procurement by the Legislature	12300-12320	PCC-69
Community Colleges	20661-20662	PCC-72

II. GOVERNMENT CODE

<u>TITLE</u>	<u>SECTION #</u>	<u>PAGE #</u>
Presentation of Claims to State Controller (Prompt Payment Act)	926.19-927.12	GC-1
Prohibitions Applicable to Specified Officers	1090-1098	GC-5
Purchases (RE: Water or Air Polluters)	4475-4482	GC-11
Target Area Contract Preference Act (TACPA)	4530-4535.3	GC-12
State Payment Card Act	6160-6166	GC-14
Inspection of Public Records	6250-6254.21	GC-17
Other Exemptions from Disclosure	6275-6276.48	GC-30
Joint Powers Agreements	6522	GC-50
Enterprise Zone Act (EZA)	7070-7086	GC-50
Local Agency Military Base Recovery Act (LAMBRA)	7118	GC-60
Drug Free Workplace	8350-8357	GC-62
State Contractors and Grantees	8355-8357	GC-62
State Auditor	8546.7	GC-63
State Agencies (modification, amendment of termination of contracts, personal information)	11010.5-11015.5	GC-63
Nondiscrimination/Compliance Employment Programs	12990	GC-65
Provisions Applicable to Appropriations of Funds	13332.09- 13332.17	GC-66
Department of General Services, General Provisions	14600-14616	GC-67
State Records-Disposal	14755-14756	GC-68
California State Contracts Register	14825-14829.2	GC-68
Small Business Procurement and Contract Act	14835-14843	GC-70
Small Business Advocacy	14845-14847	GC-75
Traffic (Carriers)	14920-14922	GC-77
Personal Services Contracts	19130-19134	GC-78
Incompatible Activities/State Officers and Employees	19990	GC-81
Conflict of Interest	87400-87407	GC-81

III. MISCELLANEOUS STATUTES

TITLE	SECTION #	PAGE #
BUSINESS AND PROFESSIONS CODE		
Professional Engineers	6706.3-6732.4	MISC-1
Contractors (Unlicensed Contractors)	7028.7	MISC-1
Contractors (Licensing)	7071.17	MISC-2
Preservation and Regulation of Competition	16720-16728	MISC-3
CIVIL CODE		
Information Practices Act of 1997	1788.14- 1798.23	MISC-6
EDUCATION CODE		
California Community Colleges	70901	MISC-8
CSU-Power of the Trustees	89036	MISC-9
FOOD & AGRICULTURE CODE		
Slaughtered Animals	19501	MISC-11
HEALTH AND SAFETY CODE		
Bucket Labeling	108625-108640	MISC-12
LABOR CODE		
Public Works – Contractors and Subcontractors	1777.1	MISC-14
MILITARY & VETERANS CODE		
Disabled Veterans Participation Goals	999-999.13	MISC-16

III. MISCELLANEOUS STATUTES, CONT.

TITLE	SECTION #	PAGE #
--------------	------------------	---------------

PUBLIC RESOURCES CODE

Recycled Content High Grade, Bleached Printing and Writing Paper Program	42200-42222	MISC-23
Definitions	42200-42204	MISC-23
Purchases	42210-42215	MISC-23
Certification	42220-42222	MISC-24
Compost Market Program	42230-42246	MISC-25
Plastic Trash Bags	42290-42297	MISC-26
Plastic Recycling Program	42360-42372	MISC-28
Retreaded Tire Program	42400-42416	MISC-29
Recycled Lead Acid Battery Program	42440-42443	MISC-30
Electronic Waste Recycling	42480	MISC-31
California Tire Recycling Act	42890-42895	MISC-31

REVENUE & TAXATION CODE

Information Returns	18646	MISC-33
---------------------	-------	---------

WELFARE & INSTITUTIONS CODE

Employment with Public Contractors	11349-11349.4	MISC-34
Rehabilitation Facilities	19403-19404	MISC-35

IV. ADMINISTRATIVE REGULATIONS
CALIFORNIA CODE OF REGULATIONS

TITLE 1. General Provisions
Division 2. Office of Administrative Hearings
**Chapter 5. Procedures for Conducting Hearings Under the Alternative
Protest Pilot**

<u>TITLE</u>	<u>SECTION #</u>	<u>PAGE #</u>
General Provisions	1400-1404	REG-1
Protest Procedure	1406-1418	REG-3
Arbitration Procedure	1420-1440	REG-7

Title 2. Administration
Division 2. Financial Operations
Chapter 1. State Board of Control

General Provisions	870.1-871	REG-13
Requirements for Submissions	871.1-872	REG-15
Pre-Hearing Procedure	872.1-873	REG-17
Hearing Procedure	873.1-874	REG-26
Prohibited Conduct	874.1-877	REG-31

Chapter 3. Department of General Services
Subchapter 7. Office of Procurement

Rules for Prequalification of Vendors	1890-1891	REG-33
Purchases on Behalf of Local Agencies	1895-1895.16	REG-35

IV. ADMINISTRATIVE REGULATIONS, Cont.

CALIFORNIA CODE OF REGULATIONS

Subchapter 8. Office of Small Business Procurement and Contracts

<u>TITLE</u>	<u>SECTION #</u>	<u>PAGE #</u>
General Provisions	1896-1896.4	REG-41
Small Business Preference	1896.6-1896.10	REG-43
Certification	1896.12- 1896.16	REG-47
Appeals	1896.18- 1896.22	REG-53

Subchapter 9. Small and Minority Business Procurement and Assistance Division – Target Area Contract Preference Act

General Provisions	1896.30- 1896.41	REG-55
--------------------	---------------------	--------

Subchapter 10. Small Business Office—Late Payments on State Contracts with Small Businesses

Small Business Definitions	1896.50	REG-59
Affiliation	1896.51	REG-59

Subchapter 10.5 Disabled Veteran Business Enterprise Participation Goal Program for State Contracts

Subchapter 10.5	1896.60- 1896.98	REG-60
-----------------	---------------------	--------

Subchapter 11. Employment and Economic Incentive Act Contract Preferences

Subchapter 11	1896.100- 1896.111	REG-79
---------------	-----------------------	--------

IV. ADMINISTRATIVE REGULATIONS, Cont.

CALIFORNIA CODE OF REGULATIONS

Title 2. Administration
Division 4. Fair Employment and Housing Commission
Chapter 5. Contractor Nondiscrimination and Compliance

TITLE	SECTION #	PAGE #
General Matters	8101-1820	REG-84
Regulations Applicable to Construction Contracts	8200-8205	REG-95
Regulations Applicable to Service and Supply Contracts	8300-8312	REG-100

V. FEDERAL CODES

Title 8 U.S.C.

Restricting Welfare and Public Benefits for Aliens	1621-1641	FED-1
--	-----------	-------

Public Contract Code

DIVISION 1. PURPOSE AND PRELIMINARY MATTERS

100. The Legislature finds and declares that placing all public contract law in one code will make that law clearer and easier to find. Further, it is the intent of the Legislature in enacting this code to achieve the following objectives:

- (a) To clarify the law with respect to competitive bidding requirements.
- (b) To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds.
- (c) To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices.
- (d) To eliminate favoritism, fraud, and corruption in the awarding of public contracts.

DIVISION 2. GENERAL PROVISIONS PART 1. ADMINISTRATIVE PROVISIONS CHAPTER 1. DEFINITIONS

1102. "Emergency," as used in this code, means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.

CHAPTER 1.6 ELECTRONIC TRANSMISSIONS

1600. Notwithstanding any other provision of law, counties, a city and county, and state agencies may enter into and make payment on contracts by way of electronic transmission, including, but not limited to, the issuance of solicitation documents, and the receipt of responses thereto.

1601. Any public entity may adopt methods and procedures to receive bids on public works or other contracts over the Internet, but only if no bid can be opened before the bid deadline and all bids can be verified as authentic.

CHAPTER 2.5 CERTIFICATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES

2050. It is the intent of the Legislature that any awarding department shall accept for purposes of public contract work any state or local agency certification for minority, women, and disadvantaged business enterprises if that certification meets the certification criteria contained in Part 23 of Title 49 of the Code of Federal Regulations. It is also the intent of the Legislature that definitions for minority and women business enterprises, as specified in subdivisions (e) and (f) of Section 10115.1, shall constitute a clarification of, rather than a change in, existing law.

2051. As used in this chapter, the following definitions apply:

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

(b) "Department" means the Department of Transportation.

(c) "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 or 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.

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

(1) The business is 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.

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

(1) The business is 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.

(f) A "disadvantaged business enterprise" means a business concern that is all of the following:

(1) A "disadvantaged business" as that term is used in Section 23.62 of Title 49 of the Code of Federal Regulations.

(2) An individual proprietorship, partnership, corporation, or joint venture.

(3) Organized for profit, with a place of business located in the United States and which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

(g) "Participating state or local agency" means any state or local agency that elects to participate in the certification process pursuant to this chapter. For purposes of this subdivision, the following definitions apply:

(1) "State agency" means any department, division, board, bureau, commission, or agency of the executive branch of government.

(2) "Local agency" means a county or city, whether general law or chartered, city and county, school district, or other district.

(3) "District" means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

2052. (a) All awarding departments and local agencies shall accept a certification by any participating state agency whose certification criteria complies with Part 23 of Title 49 of the Code of Federal Regulations. All awarding departments shall, and local agencies may, accept a certification by any participating local agency whose certification criteria complies with Part 23. Those participating state or local agency certifications shall be deemed sufficient to qualify minority, women, and disadvantaged business enterprises for purposes of contracts that are fully or partially funded by the federal government, contracts fully or partially funded by all state agencies, and contracts fully or partially funded by all local agencies, as defined in Part 3 (commencing with Section 20100).

(b) All awarding departments and local agencies shall accept the certification of a minority, women, or disadvantaged business enterprise made by a participating state agency as valid status of that enterprise, with respect to the identities of the persons certified as having ownership and control of the business enterprise, when awarding contracts to minority, women, and disadvantaged business enterprises. All awarding departments shall, and local agencies may, accept this certification when made by a participating local agency. No awarding department

shall require a business enterprise, which has complied with the certification criteria of a participating state or local agency, to comply with any other certification process for certifying minority, women, and disadvantaged business enterprises. However, a participating local agency may impose additional conditions for certification of a business enterprise concerning its status as a minority, women, or disadvantaged business enterprise relating to ethnicity, business size, and business location for participation in local programs.

2053. (a) A participating state or local agency shall certify a business enterprise as a minority or women business enterprise if that business enterprise meets the definition of a minority or women business enterprise specified in subdivisions (d) and (e) of Section 2051 in accordance with the eligibility standards set forth in Section 23.53 of Title 49 of the Code of Federal Regulations.

(b) A participating state or local agency shall certify a business enterprise as a disadvantaged business enterprise if that business enterprise meets the definition of a disadvantaged business enterprise specified in subdivision (f) of Section 2051, in accordance with the "Guidance for Making Determinations of Social and Economic Disadvantage" set forth in Appendix C to Subpart D of Part 23 of Title 49 of the Code of Federal Regulations.

(c) The participating state or local agency may include a site visit as part of its certification process. However, if a participating state or local agency certifies an applicant without conducting a site visit, any other participating state or local agency may conduct a site visit to verify ownership and control of the minority, women, or disadvantaged business enterprise. For purposes of conducting a site visit, certification documentation retained by the participating state or local agency shall be provided, upon request, to any other participating state or local agency. The applicant shall be subject to only one site visit per year, unless ownership and control changes have occurred in the business within the 12-month period following a site visit. Nothing in this chapter shall prohibit a participating state or local agency from conducting a site visit for purposes of preparing a response to an appeal from a notice of intent to decertify pursuant to Section 2055.

(d) A participating state or local agency shall complete the certification process, including verification of information submitted by the applicant and the performance of a site visit, if applicable, within 60 working days after receipt of a completed application, and shall submit the appropriate information to the Department of Transportation for insertion into the computerized data bank created pursuant to Section 2056.

(e) The grant of certification of a business enterprise by a participating state or local agency shall be valid for two years. A business enterprise that has been denied certification by a participating state or local agency may reapply for certification after six months have elapsed since the date of the denial of certification.

(f) A participating state or local agency shall provide adequate security methods to prevent contamination and unauthorized access to the information gathered during the verification process.

2054. (a) The department shall develop and make available to all awarding departments and local agencies a directory of all state and local agencies participating in the standardized certification process pursuant to this chapter. An awarding department may count, for purposes of meeting statewide participation goals, those business enterprises that have been certified by a participating state or local agency.

(b) The certification shall be under penalty of perjury. The certification application form shall include, but not be limited to, the following information:

- (1) Name of firm and address.
- (2) Name of person to contact.
- (3) Business telephone.
- (4) Type of ownership.
- (5) Controlling interest (ethnicity and citizenship).
- (6) Documentation or evidence of minority ethnicity.

(7) Name of owners, general partners, and officers of firm and their percent of ownership in the firm. If a corporation, total outstanding stock and a percentage breakdown of ownership.

(8) Management control of firm in the following areas:

(A) Financial decisions.

(B) Estimating.

(C) Marketing and sales.

(D) Hiring and dismissal of management.

(E) Purchasing of major equipment and supplies.

(9) Documentation of identity of owner or management official who is, or has been, within the last three years, an owner, manager, or employee of another firm that has an ownership interest or a present business relationship with the firm. Present business relationships include shared space, employees, equipment, or financing. Explanation of these relationships.

(10) Bonding capabilities.

(11) Questions regarding whether the firm has been denied certification, or any of the individuals listed in paragraph (7) have been involved with a firm that has been denied certification, as a minority, women, or disadvantaged business enterprise by a participating state or local agency.

(12) Type of business (for example, service, goods, construction).

(13) Provision for the attachment of a copy of an active business and contractor's license, or any other pertinent license or permit.

(14) Location area of state to be considered for work.

(15) Other documentation required to verify ownership and control of a certification applicant in accordance with Sections 23.51 and 23.53 of Title 49 of the Code of Federal Regulations, and with Publication No. FHWA-CR-90-003, dated April 1990, entitled "Disadvantaged Business Enterprise Program Administration Participant's Manual" published by the Federal Highway Administration in the United States Department of Transportation.

(16) Affidavit that all information is true and correct, including statement under penalty of perjury.

(c) A participating state or local agency granting or denying the certification shall compile and maintain documentation supporting each of the criteria set forth in subdivision (b) for a minimum of two years. The documentation shall include, but not be limited to, one copy of the issued certification with the name of the person or persons responsible for reviewing and authorizing the certification and the date on which each review and authorization occurred.

(d) The minority, women, or disadvantaged business enterprises seeking certification shall designate on the application form the information that they consider proprietary. Any information so designated shall be confidential. However, if notice is given by a participating state or local agency of its intention to decertify a business enterprise certified pursuant to this chapter, the participating state or local agency that granted the original certification shall provide access to all of its certification documentation to a participating state or local agency seeking to decertify the business enterprise, if the participating state or local agency seeking to decertify the business enterprise agrees to honor the confidentiality of the information designated as proprietary.

2055. A participating state or local agency may challenge the certification of a business enterprise made by another participating state or local agency as follows:

(a) The participating state or local agency seeking to challenge the certification determination made by another participating state or local agency shall give written notice to the certifying agency of its intention to challenge the certification determination. The certifying agency shall reexamine its certification determination and submit written notice to the challenging agency and the business enterprise of its findings after reexamination within 30 days from the date of receipt of the notice.

(b) If the challenging agency is not satisfied with the finding of the certifying agency after reexamination, the challenging agency shall submit written notice to the business enterprise, with a copy to the certifying agency, of its intention to decertify the business enterprise.

(c) A business enterprise that has received notice of decertification by an agency may appeal that decertification decision in accordance with the procedures of the agency that made the decertification decision.

2056. (a) The department shall establish and administer a computerized databank containing a list of certified minority, women, and disadvantaged business enterprises. On or before July 1, 1993, the data shall be made accessible to all awarding departments, local agencies, and the public for use in contracting for goods, construction, and services with those business enterprises.

(b) The databank shall include, but not be limited to, the following information:

(1) Name, address, and telephone number.

(2) Ethnicity.

(3) Gender.

(4) Name of the participating state or local agency that conducted a site visit, and date of site visit, if applicable.

(5) Type of ownership.

(6) Product or service categories.

(7) Geographical area.

(8) Name of the participating state or local agency that performed the certification.

(9) Any additional local requirements met by the enterprise, if applicable.

(10) A record of actions by a participating state or local agency resulting in certification denial or decertification.

(c) Information from the databank shall be made available to local public agencies and the public by the date specified in subdivision (a).

(d) The database developed to implement this section shall enable the department to monitor changes to this information and to issue any reports as may be required.

2057. This chapter shall not apply to any professional services contract subject to Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code.

CHAPTER 3. FORMATION ARTICLE 5. PREFERENCE FOR MATERIALS

3400. (a) No agency of the state, nor any political subdivision, municipal corporation, or district, nor any public officer or person charged with the letting of contracts for the construction, alteration, or repair of public works, shall draft or cause to be drafted specifications for bids, in connection with the construction, alteration, or repair of public works, (1) in a manner that limits the bidding, directly or indirectly, to any one specific concern, or (2) calling for a designated material, product, thing, or service by specific brand or trade name unless the specification is followed by the words "or equal" so that bidders may furnish any equal material, product, thing, or service. In applying this section, the specifying agency shall, if aware of an equal product manufactured in this state, name that product in the specification. Specifications shall provide a period of time prior to or after, or prior to and after, the award of the contract for submission of data substantiating a request for a substitution of "an equal" item. If no time period is specified, data may be submitted any time within 35 days after the award of the contract.

(b) Subdivision (a) is not applicable if the awarding authority, or its designee, makes a finding that is described in the invitation for bids or request for proposals that a particular material, product, thing, or service is designated by specific brand or trade name for any of the following purposes:

(1) In order that a field test or experiment may be made to determine the product's suitability for future use.

(2) In order to match other products in use on a particular public improvement either completed or in the course of completion.

(3) In order to obtain a necessary item that is only available from one source.

(4) (A) In order to respond to an emergency declared by a local agency, but only if the declaration is approved by a four-fifths vote of the governing board of the local agency issuing the invitation for bid or request for proposals.

(B) In order to respond to an emergency declared by the state, a state agency, or political subdivision of the state, but only if the facts setting forth the reasons for the finding of the emergency are contained in the public records of the authority issuing the invitation for bid or request for proposals.

3410. Any public entity, as defined in Section 1100, including any school district or community college district, when purchasing food, shall give preference to United States-grown produce and United States-processed foods when there is a choice and it is economically feasible to do so. For purposes of this section, the determination of "economically feasible" shall be made by the purchasing public entity, considering the total cost, quantity, and quality of the food and the budget and policies of the entity.

CHAPTER 6. AWARDING OF CONTRACTS

6100. (a) Any state agency or department, as defined in Section 10357, which is subject to this code, shall, prior to awarding a contract for work to be performed by a contractor, as defined by Section 7026 of the Business and Professions Code, verify with the Contractors' State License Board that the person seeking the contract is licensed in a classification appropriate to the work to be undertaken. Verification as required by this section need only be made once every two years with respect to the same contractor.

(b) In lieu of the verification, the state entity may require the person seeking the contract to present his or her pocket license or certificate of licensure and provide a signed statement which swears, under penalty of perjury, that the pocket license or certificate of licensure presented is his or hers, is current and valid, and is in a classification appropriate to the work to be undertaken.

6101. No state agency or department, as defined in Section 10357, that is subject to this code, shall award a public works or purchase contract to a bidder or contractor, nor shall a bidder or contractor be eligible to bid for or receive a public works or purchase contract, who has, in the preceding five years, been convicted of violating a state or federal law respecting the employment of undocumented aliens.

6106. (a) Any state agency or department, which is subject to this code, shall follow this section in negotiating fees and executing a contract for professional consulting services of a private architectural, engineering, land surveying, environmental, or construction project management firm.

(b) After providing notification to the successful firm of its selection, the state shall provide written instructions for the negotiations which are to follow. These instructions shall provide the private consulting firm with necessary information which shall allow the negotiations to proceed in an orderly fashion.

Negotiations shall begin within 14 days after the successful firm has been notified of its selection or upon receipt of the cost proposal. The contractor should be notified if additional time is necessary to begin negotiations.

(c) Upon the completion of negotiations, the state and the private firm shall proceed to execute a contract so that the contract may be completed by the state within 45 days. The contractor should be notified if additional time is necessary to complete the contract. The state and private firm shall work together to ensure the successful delivery of the requested services in a timely fashion.

(d) In the event that an impasse is reached in negotiations, the state agency or department may terminate negotiations and enter into negotiations with the next most qualified firm as prescribed in Section 4528 of the Government Code.

6107. (a) As used in this section, "California company" means a sole proprietorship, partnership, joint venture, corporation, or other business entity that was a licensed California contractor on the date when bids for the public contract were opened and meets one of the following:

(1) Has its principal place of business in California.

(2) Has its principal place of business in a state in which there is no local contractor preference on construction contracts.

(3) Has its principal place of business in a state in which there is a local contractor construction preference and the contractor has paid not less than five thousand dollars (\$5,000) in sales or use taxes to California for construction related activity for each of the five years immediately preceding the submission of the bid.

(b) (1) When awarding contracts for construction, a state agency shall grant a California company a reciprocal preference as against a nonresident contractor from any state that gives or requires a preference to be given contractors from that state on its public entity construction contracts.

(2) The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor with the lowest responsive bid, except where the resident contractor is eligible for a California small business preference, in which case the preference applied shall be the greater of the two, but not both.

(3) If the contractor submitting the lowest responsive bid is not a California company and has its principal place of business in any state that gives or requires the giving of a preference on its public entity construction contracts to contractors from that state, and if a California company has also submitted a responsive bid, and, with the benefit of the reciprocal preference, the California company's bid is equal to or less than the original lowest responsive bid, the public entity shall award the contract to the California company at its submitted bid price.

(c) (1) The bidder shall certify, under penalty of perjury, that the bidder qualifies as a California company.

(2) A nonresident contractor shall, at the time of bidding, disclose to the awarding agency any and all bid preferences provided to the nonresident contractor by the state or country in which the nonresident contractor has its principal place of business.

(d) The reciprocal preference is waived if the certification described in paragraph (1) of subdivision (c) does not appear on the bid.

(e) This section does not apply if application of this section might jeopardize the receipt of federal funds or the nonresident contractor certifies, under penalty of perjury, in its bid that its state of residency does not give a preference for contractors from that state on its public entity construction contracts.

(f) "Construction related activity" shall include, without limitation, any activity for which a California contractors' license is required.

6108. (a) (1) Every contract entered into by any state agency for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, shall require that a contractor certify that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor shall agree to comply with this provision of the contract.

(2) The contract shall specify that the contractor is required to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations, or the Department of Justice determine the contractor's compliance with the requirements under paragraph (1).

(b) (1) Any contractor contracting with the state who knew or should have known that the apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state were laundered or produced in violation of the conditions specified in subdivision (a) when entering into a contract pursuant to subdivision (a), may, subject to subdivision (c), have any or all of the following sanctions imposed:

(A) The contract under which the prohibited apparel, garments or corresponding accessories, equipment, materials, or supplies were laundered or provided may be voided at the option of the state agency to which the equipment, materials, or supplies were provided.

(B) The contractor may be assessed a penalty which shall be the greater of one thousand dollars (\$1,000) or an amount equaling 20 percent of the value of the apparel, garments or corresponding accessories, equipment, materials, or supplies that the state agency demonstrates were produced in violation of the conditions specified in paragraph (1) of subdivision (a) and that were supplied to the state agency under the contract.

(C) The contractor may be removed from the bidder's list for a period not to exceed 360 days.

(2) Any moneys collected pursuant to this subdivision shall be deposited into the General Fund.

(c) (1) When imposing the sanctions described in subdivision (b), the contracting agency shall notify the contractor of the right to a hearing, if requested, within 15 days of the date of the notice. The hearing shall be before an administrative law judge of the Office of Administrative Hearings in accordance with the procedures specified in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. The administrative law judge shall take into consideration any measures the contractor has taken to ensure compliance with this section, and may waive any or all of the sanctions if it is determined that the contractor has acted in good faith.

(2) The agency shall be assessed the cost of the administrative hearing, unless the agency has prevailed in the hearing, in which case the contractor shall be assessed the cost of the hearing.

(d) (1) Any state agency that investigates a complaint against a contractor for violation of this section may limit its investigation to evaluating the information provided by the person or entity submitting the complaint and the information provided by the contractor.

(2) Whenever a contracting officer of the contracting agency has reason to believe that the contractor failed to comply with the requirements under paragraph (1) of subdivision (a), the agency shall refer the matter for investigation to the head of the agency and, as the head of the agency determines appropriate, to either the Director of Industrial Relations or the Department of Justice.

(e) (1) For purposes of this section, the term "forced labor" shall have the same meaning as in Section 1307 of Title 19 of the United States Code.

(2) "Abusive forms of child labor" means any of the following:

(A) All forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage, and serfdom and forced or compulsory labor, including forced or compulsory recruitment of children for use in armed conflict.

(B) The use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances.

(C) The use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of illicit drugs.

(D) All work or service exacted from or performed by any person under the age of 18 either under the menace of any penalty for its nonperformance and for which the worker does not offer oneself voluntarily, or under a contract, the enforcement of which can be accomplished by process or penalties.

(E) All work or service exacted from or performed by a child in violation of all applicable laws of the country of manufacture governing the minimum age of employment, compulsory education, and occupational health and safety.

(3) "Exploitation of children in sweatshop labor" means all work or service exacted from or performed by any person under the age of 18 years in violation of more than one law of the

country of manufacture governing wage and benefits, occupational health and safety, nondiscrimination, and freedom of association.

(4) "Sweatshop labor" means all work or service extracted from or performed by any person in violation of more than one law of the country of manufacture governing wages, employee benefits, occupational health, occupational safety, nondiscrimination, or freedom of association.

(5) "Apparel, garments or corresponding accessories" includes, but is not limited to, uniforms.

(6) Notwithstanding any other provision of this section, "forced labor" and "convict labor" do not include work or services performed by an inmate or a person employed by the Prison Industry Authority.

(7) "State agency" means any state agency in this state.

(f) (1) On or before February 1, 2004, the Department of Industrial Relations shall establish a contractor responsibility program, including a Sweatfree Code of Conduct, to be signed by all bidders on state contracts and subcontracts. Any state agency responsible for procurement shall ensure that the Sweatfree Code of Conduct is available for public review at least 30 calendar days between the dates of receipt and the final award of the contract. The Sweatfree Code of Conduct shall list the requirements that contractors are required to meet, as set forth in subdivision (g).

(2) Upon implementation in the manner described in paragraph (4), every contract entered into by any state agency for the procurement or laundering of apparel, garments or corresponding accessories, or for the procurement of equipment or supplies, shall require that the contractor certify in accordance with the Sweatfree Code of Conduct that no apparel, garments or corresponding accessories, or equipment, materials, or supplies, furnished to the state pursuant to the contract have been laundered or produced, in whole or in part, by sweatshop labor.

(3) The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall employ a phased and targeted approach to implementing the Sweatfree Code of Conduct. Sweatfree Code of Conduct procurement policies involving apparel, garments and corresponding accessories may be permitted a phase in period of up to one year for purposes of feasibility and providing sufficient notice to contractors and the general public. The appropriate procurement agency, in consultation with the Director of Industrial Relations, shall target other procurement categories based on the magnitude of verified sweatshop conditions and the feasibility of implementation, and may set phase in goals and timetables of up to three years in order to achieve compliance with the principles of the Sweatfree Code of Conduct.

(4) In order to facilitate compliance with the Sweatfree Code of Conduct, the Department of Industrial Relations shall explore mechanisms employed by other governmental entities, including, but not limited to, New Jersey Executive Order 20, of 2002, to ensure that businesses that contract with this state are in compliance with this section and any regulations or requirements promulgated in conformance with this section, as amended by the act adding this paragraph. The mechanisms explored may include, but not be limited to, authorization to contract with a competent nonprofit organization that is neither funded nor controlled, in whole or in part, by a corporation that is engaged in the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies. The Department of Industrial Relations, in complying with this paragraph, shall also consider any feasible and cost-effective monitoring measures that will encourage compliance with the Sweatfree Code of Conduct.

(5) To ensure public access and confidence, the Department of Industrial Relations shall ensure public awareness and access to proposed contracts by postings on the Internet and through communication to advocates for garment workers, unions, and other interested parties. The appropriate agencies shall establish a mechanism for soliciting and reviewing any information indicating violations of the Sweatfree Code of Conduct by prospective or current bidders, contractors, or subcontractors. The agencies shall make their findings public when they reject allegations against bidding or contracting parties.

(6) Contractors shall ensure that their subcontractors comply in writing with the Sweatfree Code of Conduct, under penalty of perjury.

Contractors shall attach a copy of the Sweatfree Code of Conduct to the certification required by subdivision (a).

(g) No state agency may enter into a contract with any contractor unless the contractor meets the following requirements:

(1) Contractors and subcontractors in California shall comply with all appropriate state laws concerning wages, workplace safety, rights to association and assembly, and nondiscrimination standards as well as appropriate federal laws. Contractors based in other states in the United States shall comply with all appropriate laws of their states and appropriate federal laws. For contractors whose locations for manufacture or assembly are outside the United States, those contractors shall ensure that their subcontractors comply with the appropriate laws of countries where the facilities are located.

(2) Contractors and subcontractors shall maintain a policy of not terminating any employee except for just cause, and employees shall have access to a mediator or to a mediation process to resolve certain workplace disputes that are not regulated by the National Labor Relations Board.

(3) Contractors and subcontractors shall ensure that workers are paid, at a minimum, wages and benefits in compliance with applicable local, state, and national laws of the jurisdiction in which the labor, on behalf of the contractor or subcontractor, is performed. Whenever a state agency expends funds for the procurement or laundering of apparel, garments, or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, the applicable labor standards established by the local jurisdiction through the exercise of either local police powers or local spending powers in which the labor, in compliance with the contract or purchase order for which the expenditure is made, is performed shall apply with regard to the contract or purchase order for which the expenditure is made, unless the applicable local standards are in conflict with, or are explicitly preempted by, state law. A state agency may not require, as a condition for the receipt of state funds or assistance, that a local jurisdiction refrain from applying the labor standards that are otherwise applicable to that local jurisdiction. The Department of Industrial Relations may, without incurring additional expenses, access information from any nonprofit organization, including, but not limited to, the World Bank, that gathers and disseminates data with respect to wages paid throughout the world, to allow the Department of Industrial Relations to determine whether contractors and subcontractors are compensating their employees at a level that enables those employees to live above the applicable poverty level.

(4) All contractors and subcontractors must comply with the overtime laws and regulations of the country in which their employees are working.

(5) All overtime hours shall be worked voluntarily. Workers shall be compensated for overtime at either (A) the rate of compensation for regular hours of work, or (B) as legally required in the country of manufacture, whichever is greater.

(6) No person may be employed who is younger than the legal age for children to work in the country in which the facility is located.

In no case may children under the age of 15 years be employed in the manufacturing process. Where the age for completing compulsory education is higher than the standard for the minimum age of employment, the age for completing education shall apply to this section.

(7) There may be no form of forced labor of any kind, including slave labor, prison labor, indentured labor, or bonded labor, including forced overtime hours.

(8) The work environment shall be safe and healthy and, at a minimum, be in compliance with relevant local, state, and national laws. If residential facilities are provided to workers, those facilities shall be safe and healthy as well.

(9) There may be no discrimination in hiring, salary, benefits, performance evaluation, discipline, promotion, retirement or dismissal on the basis of age, sex, pregnancy, maternity leave status, marital status, race, nationality, country of origin, ethnic origin, disability, sexual orientation, gender identity, religion, or political opinion.

(10) No worker may be subjected to any physical, sexual, psychological, or verbal harassment or abuse, including corporal punishment, under any circumstances, including, but not limited to, retaliation for exercising his or her right to free speech and assembly.

(11) No worker may be forced to use contraceptives or take pregnancy tests. No worker may be exposed to chemicals, including glues and solvents, that endanger reproductive health.

(12) Contractors and bidders shall list the names and addresses of each subcontractor to be utilized in the performance of the contract, and list each manufacturing or other facility or operation of the contractor or subcontractor for performance of the contract. The list, which shall be maintained and updated to show any changes in subcontractors during the term of the contract, shall provide company names, owners or officers, addresses, telephone numbers, e-mail addresses, and the nature of the business association.

(h) Any person who certifies as true any material matter pursuant to this section that he or she knows to be false is guilty of a misdemeanor.

(i) The provisions of this section, as amended by the act adding this subdivision, shall be in addition to any other provisions that authorize the prosecution and enforcement of local labor laws and may not be interpreted to prohibit a local prosecutor from bringing a criminal or civil action against an individual or business that violates the provisions of this section.

6109. (a) A public entity, as defined in Section 1100, may not permit a contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code to bid on, be awarded, or perform work as a subcontractor on, a public works project. Every public works project shall contain a provision prohibiting a contractor from performing work on a public works project with a subcontractor who is ineligible to perform work on the public works project pursuant to Section 1777.1 or 1777.7 of the Labor Code.

(b) Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the awarding body. The contractor shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the project.

6610. Notice inviting formal bids for projects by a public agency that include a requirement for any type of mandatory prebid conference, site visit, or meeting shall include the time, date, and location of the mandatory prebid site visit, conference or meeting, and when and where project documents, including final plans and specifications are available. Any mandatory prebid site visit, conference or meeting shall not occur within a minimum of five calendar days of the publication of the initial notice. This provision shall not apply to the Regents of the University of California.

6611. (a) Notwithstanding any other provision of law, the Department of General Services may, relative to contracts for goods, services, information technology, and telecommunications, use a negotiation process if the department finds that one or more of the following conditions exist:

(1) The business need or purpose of a procurement or contract can be further defined as a result of a negotiation process.

(2) The business need or purpose of a procurement or contract is known by the department, but a negotiation process may identify different types of solutions to fulfill this business need or purpose.

(3) The complexity of the purpose or need suggests a bidder's costs to prepare and develop a solicitation response are extremely high.

(4) The business need or purpose of a procurement or contract is known by the department, but negotiation is necessary to ensure that the department is receiving the best value or the most cost-efficient goods, services, information technology, and telecommunications.

(b) When it is in the best interests of the state, the department may negotiate amendments to the terms and conditions, including scope of work, of existing contracts for goods, services, information technology, and telecommunications, whether or not the original contract was the result of competition, on behalf of itself or another state agency.

(c) (1) The department shall establish the procedures and guidelines for the negotiation process described in subdivision (a), which procedures and guidelines shall include, but not be limited to,

a clear description of the methodology that will be used by the department to evaluate a bid for the procurement goods, services, information technology, and telecommunications.

(2) The procedures and guidelines described in paragraph (1) may include provisions that authorize the department to receive supplemental bids after the initial bids are opened. If the procedures and guidelines include these provisions, the procedures and guidelines shall specify the conditions under which supplemental bids may be received by the department.

(d) This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 7. CONTRACT CLAUSES

7103. (a) Every original contractor to who is awarded a contract by a state entity, as defined in subdivision (d), involving an expenditure in excess of five thousand dollars (\$5,000) for any public work shall, before entering up the performance of the work, file a payment bond with and approved by the officer or state entity by who the contract was awarded. The bond shall be in a sum not less than one hundred percent of the total amount payable by the terms of the contract. The state entity shall state in its call for bids for any contract that a payment bond is required in the case of such an expenditure.

(b) A payment bond filed and approved in accordance with this section shall be sufficient to enter upon the performance of work under a duly authorized contract which supplements the contract for which the payment bond was filed if the requirement of a new bond is waived by the state entity.

(c) For purposes of this section, providers of architectural, engineering and land surveying services pursuant to a contract with a state entity for a public work shall not be deemed an original contractor and shall not be required to post or file the payment bond required in subdivisions (a) and (b).

(d) For purposes of this section, "state entity" means every state office department, division, bureau, board, or commission, but does not include the Legislature, the courts, any agency in the judicial branch of government, or the University of California. All other public entities shall be governed by the provisions of Section 3247 of the Civil Code.

(e) For purposes of this section, "public work" includes the erection, construction, alteration, repair or improvement of any state structure, building, road, or other state improvement of any kind.

7200. (a) (1) This section shall apply with respect to all contracts entered into on or after January 1, 1999, between a public entity and an original contractor, between an original contractor and a subcontractor, and between all subcontractors thereunder, relating to the construction of any public work of improvement.

(2) For purposes of this section, "public entity" means the state, including every state agency, office, department, division, bureau, board, or commission, a city, county, city and county, including chartered cities and chartered counties, district, special district, public authority, political subdivision, public corporation, or nonprofit transit corporation wholly owned by a public agency and formed to carry out the purposes of the public agency.

(b) In a contract between the original contractor and a subcontractor, and in a contract between a subcontractor and any subcontractor thereunder, the percentage of the retention proceeds withheld may not exceed the percentage specified in the contract between the public entity and the original contractor.

(c) When a performance and payment bond is required in the solicitation for bids, subdivision (b) shall not apply to either of the following:

(1) The original contractor, if the subcontractor fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the original contractor.

(2) The subcontractor, if a subcontractor thereunder fails or refuses to provide a performance and payment bond, issued by an admitted surety insurer, to the subcontractor.

(d) No party identified in subdivision (b) shall require any other party to waive any provision of this section.

(e) In the event that the contractor elects to substitute securities in lieu of retentions, the contractor may withhold from his or her subcontractors, who have not elected to substitute securities in lieu of retentions, the amount of retentions that would have otherwise been withheld.

DIVISION 2. GENERAL PROVISIONS
PART 2. CONTRACTING BY STATE AGENCIES
CHAPTER 1. STATE CONTRACT ACT
ARTICLE 1.5. MINORITY AND WOMEN BUSINESS PARTICIPATION GOALS FOR STATE
CONTRACTS

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.

10115.5. (a) Notwithstanding Section 7550.5 of the Government Code, on January 1 of each year, each awarding department shall report to the Governor and the Legislature on the level of participation by minority, women, and disabled veteran business enterprises in contracts as identified in this article for the fiscal year beginning July 1 and ending June 30. In addition, the report shall contain the levels of participation by minority, women, and disabled veteran business enterprises for the following categories of contracts:

(1) Construction.

(2) Purchases of materials, supplies, and equipment.

(3) Professional services.

(4) All contracts for a dollar amount of less than twenty-five thousand dollars (\$25,000).

(b) If the established goals are not being met, the awarding department shall report the reasons for its inability to achieve the standards and identify remedial steps it shall take.

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.

10116. (a) On January 1, of each year, each awarding department shall report to the Governor and the Legislature on the level of participation of business enterprises, by race, ethnicity, and gender of owner, in contracts as identified in this article for the fiscal year beginning July 1 and ending June 30. In addition, the report shall contain the levels of participation of business enterprises, by race, ethnicity, and gender of owner, for the following categories of contracts:

(1) Construction.

(2) Purchases of materials, supplies, or equipment.

(3) Professional services.

(4) All contracts for a dollar amount of less than twenty-five thousand dollars (\$25,000).

(b) Awarding departments are prohibited from using the data compiled under this section to discriminate or provide a preference in the awarding of any contracts.

(c) Contractors are prohibited from using the information compiled under this section to discriminate or provide a preference 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.

ARTICLE 10. INELIGIBILITY TO CONTRACT

10285. The term "person," as used in this article, means any individual, partnership, joint venture, or association or any other organization or any combination thereof.

10285.1. Any state agency may suspend, for a period of up to three years from the date of conviction, any person from bidding upon, or being awarded, a public works or services contract with the agency under this part or from being a subcontractor at any tier upon the contract, if that person, or any partner, member, officer, director, responsible managing officer, or responsible managing employee thereof, has been convicted by a court of competent jurisdiction of any charge of fraud, bribery, collusion, conspiracy, or any other act in violation of any state or federal antitrust law in connection with the bidding upon, award of, or performance of, any public works contract, as defined in Section 1101, with any public entity, as defined in Section 1100, including, for the purposes of this article, the Regents of the University of California or the Trustees of the California State University. A state agency may determine the eligibility of any person to enter

into a contract under this article by requiring the person to submit a statement under penalty of perjury declaring that neither the person nor any subcontractor to be engaged by the person has been convicted of any of the offenses referred to in this section within the preceding three years.

10285.2. Before suspending any person under this article, the state agency shall provide a hearing upon reasonable notice. In determining whether to suspend, and the duration of any suspension, the state agency shall consider, in addition to any other relevant factors, both of the following:

(a) The degree to which the person cooperated with the state or federal authorities in the criminal proceeding.

(b) The degree to which the person has agreed to restitution for any damages incurred by the public entity as a result of the acts upon which the conviction was based.

10285.3. In the event that any state agency has suspended any person under this article, any other state agency shall adopt the terms of that suspension without further notice or hearing.

10285.4. In the event that any state agency has suspended any person under this article, that agency may terminate the suspension if it determines that termination is in the best interest of the agency. In the event of termination, any suspension by adoption pursuant to Section 10285.3 also shall be terminated.

10285.5. Nothing in this article shall require any state agency to contract with, or to permit the employment of a person as a subcontractor, or any person on any project funded in whole or part by federal funds, if the person has been suspended or debarred by the federal agency providing the funds.

CHAPTER 1.5 TAXPAYER AND SHAREHOLDER PROTECTION ACT OF 2003

10286. This chapter shall be known and may be cited as the California Taxpayer and Shareholder Protection Act of 2003.

10286.1. (a) For purposes of this part, except as otherwise provided in subdivisions (b) and (c), a state agency may not enter into any contract with an expatriate corporation or its subsidiaries.

(b) (1) For purposes of this article, an "expatriate corporation" means a foreign incorporated entity that is publicly traded in the United States to which all of the following apply:

(A) The United States is the principal market for the public trading of the foreign incorporated entity.

(B) The foreign incorporated entity has no substantial business activities in the place of incorporation.

(C) Either clause (i) or clause (ii) applies:

(i) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) immediately after the acquisition, more than 50 percent of the publicly traded stock, by vote or value, of the foreign entity is held by former shareholders of the domestic corporation or by former partners of the domestic partnership or related foreign partnership. For purposes of subclause (II), any stock sold in a public offering related to the transaction or a series of transactions is disregarded.

(ii) The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all

of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) the acquiring foreign entity is more than 50 percent owned, by vote or value, by domestic shareholders or partners.

(iii) For purposes of this subparagraph, indirect acquisition of property includes the acquisition of a stock share, or any portion thereof, of the owner of that property.

(2) Notwithstanding subdivision (a), a state agency may contract with an expatriate corporation, or its subsidiary, if it was an expatriate corporation before January 1, 2004, to which both of the following apply:

(A) The foreign entity provides, by operation of law, by provisions of its governing documents, by resolution of its board of directors, or in any other manner, at least the following shareholders' rights:

(i) Shareholders of the entity have the right to inspect, at a principal place of business in the United States, copies of the entity's books and records, including, but not limited to, shareholder names, addresses, and shareholdings in accordance with the corporation law, as amended from time to time and as that law is interpreted by the courts, of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, in accordance with the terms set forth in the Model Business Corporation Act, as that act may be amended from time to time, provided that, if the corporate law of the United States jurisdiction in which the entity was previously incorporated or the Model Business Corporation Act does not provide access to the shareholder names, addresses, and shareholdings, these books and records are available for inspection by shareholders for purposes properly related to their status as shareholders of the entity.

(ii) The entity permits its shareholders to bring derivative proceedings on behalf of the entity, provided that these derivative proceedings are brought on a basis and under the terms applicable under the law, as amended from time to time and as interpreted by, or required by, the courts of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, on a basis and under the terms set forth in the Model Business Corporations Act as that act may be amended from time to time and as it is interpreted by, or required by, the courts.

(iii) Entity transactions in which any director is interested are approved in accordance with the applicable law, as amended from time to time and as interpreted by the courts, of the United States jurisdiction in which the entity was previously incorporated, or, if the entity was not previously incorporated, in accordance with the terms set forth in the Model Business Corporations Act, as may be amended from time to time and as interpreted by the courts.

(iv) The entity has consented to the jurisdiction, for any otherwise available cause of action by or on behalf of the entity's shareholders, including any pendent state causes of action, of all of the following courts:

(I) The state courts of one or more states.

(II) The United States federal courts in any state in which the entity consents to the jurisdiction of that state's courts pursuant to subclause (I).

(v) The entity has appointed an agent for service of process in the state or states in which the entity has consented to jurisdiction, as described in clause (iv), and the entity meets at least one of the following conditions:

(I) The entity has unencumbered assets in the United States, which assets may include equity or debt investments in United States companies, with a book value in excess of fifty million dollars (\$50,000,000), and the entity delivers to the Secretary of State an opinion of an attorney licensed in the United States that judgments rendered against the entity may be satisfied by using these assets.

(II) The entity posts a bond or similar security in an amount of at least fifty million dollars (\$50,000,000).

(III) The entity has directors' and officers' insurance in an amount of at least fifty million dollars (\$50,000,000).

(vi) The entity agrees that, in connection with any lawsuit brought against it by its shareholders in any court in which the entity has consented to jurisdiction as described in clause (iv), the entity will provide to the court notice of the manner in which the entity complied with clause (v) and, if

the entity complied with that clause in the manner specified in subclause (l) of clause (v), a copy of the opinion described in that subclause.

(vii) Shareholder approval is required for any sale of all or substantially all of the entity's assets in accordance with the law, as amended from time to time and as it is interpreted by the courts, of the United States jurisdiction in which it was previously incorporated, or, if it was not previously incorporated, in accordance with the terms set forth in the Model Business Corporations Act, as it may be amended from time to time.

(viii) The directors and officers of the entity occupy a fiduciary relationship with the entity and its shareholders and these directors and officers, in performing their duties, act in good faith in a manner that a director or officer believes to be in the best interests of the entity and its shareholders, as that standard of care is interpreted by the courts.

(ix) The entity agrees to hold no more than one of every four annual shareholder meetings in a location outside the United States and, in the event that the entity holds an annual meeting outside the United States, the entity agrees to provide access to that meeting through a Web cast or other technology that allows the entity's shareholders to do both of the following:

(I) Listen to the meeting, watch the meeting, or both.

(II) Send questions that will be addressed at the meeting.

(x) The entity provides a description of the shareholder rights described in clauses (i) to (ix), inclusive, and any subsequent changes to these rights, on the entity's Web site or in its 10K filings with the United States Securities and Exchange Commission.

(B) The entity uses worldwide combined reporting to calculate the income on which it pays taxes to the state.

(c) The chief executive officer of a state agency or his or her designee may waive the prohibition specified in subdivision (a) if the executive officer or his or her designee has made a written finding that the contract is necessary to meet a compelling public interest. For purposes of this section, a "compelling public interest" includes, but is not limited to, ensuring the provision of essential services, ensuring the public health and safety, or an emergency as defined in Section 1102. If a waiver is granted to a vendor pursuant to this subdivision, the requirement to submit a declaration of compliance, as set forth in paragraph (1) of subdivision (d), does not apply to that vendor.

(d) (1) For purposes of this chapter, "state agency" means every state office, department, division, bureau, board, commission, and the California State University, but does not include the University of California, the Legislature, the courts, or any agency in the judicial branch of government.

(2) On or after January 1, 2004, all state agencies shall, as a condition of the contract, require any vendor that is offered a contract to do business with the state to submit a declaration stating that the vendor is eligible to contract with the state pursuant to this section.

(3) A vendor that declares as true any material matter in a declaration described in this subdivision that he or she knows to be false is guilty of a misdemeanor.

(e) (1) Except as provided in paragraph (2), this section applies to contracts that are entered into on or after January 1, 2004.

(2) With respect to an entity that was an expatriate corporation, as defined in paragraph (1) of subdivision (b), before January 1, 2004, this section applies to contracts that are entered into on or after April 1, 2004.

CHAPTER 2. STATE ACQUISITION OF GOODS AND SERVICES
ARTICLE 1. DEFINITIONS

10290. As used in this chapter:

- (a) "Department" means the Department of General Services.
- (b) "Director" means the Director of General Services.
- (c) "Centralized purchasing" means the purchase for state agencies of materials, supplies, and equipment by the Office of Procurement.
- (d) "Goods" means all types of tangible personal property, including materials, supplies, and equipment.
- (e) "Office" means the Office of Procurement in the Department of General Services.
- (f) "Price schedule" means an agreement between the Office of Procurement and a supplier under which the supplier agrees to accept orders from the office or a state agency for specified goods at set prices for a specified period of time but which does not obligate the office or state agencies to contract for the specified goods from the supplier.
- (g) "Regional contract" means a contract of the same type as a statewide contract but applicable only to specified contracting in a particular area or region of the state.
- (h) "Statewide contract" means a contract awarded by the Office of Procurement to one or more suppliers for the acquisition of specified goods for a period of time, at a price, and in an amount set forth in the contract.
- (i) "Multiple award" means a contract of indefinite quantity for one or more similar goods, information technology, or services to more than one supplier.
- (j) "Multiple award schedule" (MAS) is an agreement established between the General Services Administration of the United States and certain suppliers to do business under specific prices, terms, and conditions for specified goods, information technology, or services.

10290.1. (a) Notwithstanding any other provision of law, in exercising their delegation of contracting authority from the department, state agencies may contract for goods, information technology, or services with suppliers who have multiple award schedules with the General Services Administration of the United States if the supplier is willing to extend those terms, conditions, and prices. The department may also develop multiple award schedules or agreements for use by state agencies in the same manner.

(b) The department shall determine the delegation contracting authority for agencies wishing to contract with suppliers who have multiple award schedules. The department shall seek input from both customer departments and agencies and private sector suppliers.

10290.3. (a) Notwithstanding the bidding provisions of this chapter, reverse auctions may be utilized for the acquisition of goods and services. The reverse auction process shall include a specification of an opening date and time when real-time electronic bids may be accepted, and provide that the procedure shall remain open until the designated closing date and time.

(b) All bids on reverse auctions shall be posted electronically on the Internet, updated on a real-time basis, and shall allow registered bidders to lower the price of their bid below the lowest bid posted on the Internet.

(c) The Department of General Services shall require vendors to register before the reverse auction opening date and time, and as part of the registration, agree to any terms and conditions and other requirements of the solicitation. The Department of General Services may require vendors to be prequalified prior to placing bids in a reverse auction.

(d) For purposes of this section, "reverse auction" means a competitive online solicitation process for fungible goods or services in which vendors compete against each other online in real time in an open and interactive environment.

(e) The reverse auction process may not be used for bidding on any construction contract that is subject to Chapter 1 (commencing with Section 10100).

ARTICLE 2. APPROVAL OF CONTRACTS

10295. (a) All contracts entered into by any state agency for (1) the acquisition of goods or elementary school textbooks, (2) services, whether or not the services involve the furnishing or use of goods or are performed by an independent contractor, (3) the construction, alteration, improvement, repair, or maintenance of property, real or personal, or (4) the performance of work or services by the state agency for or in cooperation with any person, or public body, are void unless and until approved by the department.

Every contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of the approval.

(b) This section applies to any state agency that by general or specific statute is expressly or impliedly authorized to enter into transactions referred to in this section.

(c) This section does not apply to the following:

(1) Any transaction entered into by the Trustees of the California State University, by the Board of Governors of the California Community Colleges, or by a department under the State Contract Act or the California State University Contract Law.

(2) Any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under Section 14035 or 14035.5 of the Government Code, Sections 99316 to 99319, inclusive, of the Public Utilities Code, or the Streets and Highways Code.

(3) Any contract entered into by the Department of Transportation that is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources.

(4) Any contract entered into by the Department of Personnel Administration for state employee benefits, occupational health and safety, training services, or combination thereof.

(5) Any contract let by the Legislature.

(6) Any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code.

10295.1. (a) A state department or agency may not contract for the purchase of tangible personal property from a vendor, contractor, or an affiliate of a vendor or contractor, unless that vendor, contractor, and all of its affiliates that make sales for delivery into California are holders of a California seller's permit issued pursuant to Article 2 (commencing with Section 6066) of Chapter 2 of Part 1 of Division 2 of the Revenue and Taxation Code, or are holders of a certificate of registration issued pursuant to Section 6226 of the Revenue and Taxation Code. A vendor or contractor that sells tangible personal property to a state department or agency, and each affiliate of that vendor or contractor that makes sales for delivery into California, shall be regarded as a "retailer engaged in business in this state" and shall be required to collect the California sales or use tax on all its sales into the state in accordance with Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(b) Beginning on and after January 1, 2004, each vendor, contractor, or affiliate of a vendor or contractor that is offered a contract to do business with a state department or state agency shall submit to that state department or agency a copy, as applicable, of that retailer's seller's permit or certificate of registration, and a copy of each of the retailer's applicable affiliate's seller's permit or certificate of registration, as described in subdivision (a).

(c) A state department or state agency is exempted from the provisions of subdivision (a) if the executive director, or his or her designee, of that state department or agency makes a written finding that the contract is necessary to meet a compelling state interest.

(d) For the purposes of this section:

(1) "Affiliate of the vendor or contractor" means any person or entity that is controlled by, or is under common control of, a vendor or contractor through stock ownership or any other affiliation.

(2) "Compelling state interest" includes, but is not limited to, the following:

- (A) Ensuring the provision of essential services.
- (B) Ensuring the public health, safety and welfare.
- (C) Responding to an emergency, as defined in Section 1102.
- (3) "State department or agency" means every state office, department, division, bureau, board, commission and the California State University, but does not include the University of California, the Legislature, the courts, and any agency in the judicial branch of government.

10295.3. (a) (1) Notwithstanding any other provision of law, no state agency may enter into any contract for the acquisition of goods or services in the amount of one hundred thousand dollars (\$100,000) or more with a contractor who, in the provision of benefits, discriminates between employees with spouses and employees with domestic partners, or discriminates between the domestic partners and spouses of those employees.

(2) For purposes of this section, "contract" includes contracts with a cumulative amount of one hundred thousand dollars (\$100,000) or more per contractor in each fiscal year.

(3) For purposes of this section, "domestic partner" means one of two persons who has filed a declaration of domestic partnership with the Secretary of State pursuant to Division 2.5 (commencing with Section 297) of the Family Code.

(4) (A) Subject to subparagraph (B), this section does not apply to any contracts executed or amended prior to January 1, 2007, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the state, prior to January 1, 2007, unless and until those contracts or property contracts are amended after December 31, 2006, and would otherwise be subject to this section.

(B) If a duration of a contract executed or amended prior to January 1, 2007, is for more than one year going beyond January 1, 2008, this section shall apply to the contract on January 1, 2008.

(5) The requirements of this section shall apply only to those portions of a contractor's operations that occur under any of the following conditions:

(A) Within the state.

(B) On real property outside the state if the property is owned by the state or if the state has a right to occupy the property, and if the contractor's presence at that location is connected to a contract with the state.

(C) Elsewhere in the United States where work related to a state contract is being performed.

(b) Contractors shall treat as confidential to the maximum extent allowed by law or by the requirement of the contractor's insurance provider, any request by an employee or applicant for employment for domestic partner or spousal benefits or any documentation of eligibility for domestic partner or spousal benefits submitted by an employee or applicant for employment.

(c) After taking all reasonable measures to find a contractor that complies with this section as determined by the state agency, the requirements of this section may be waived under any of the following circumstances:

(1) Whenever there is only one prospective contractor willing to enter into a specific contract with the state agency.

(2) If the contract is necessary to respond to an emergency, as determined by the state agency, that endangers the public health, welfare, or safety, or the contract is necessary for the provision of essential services, and no entity that complies with the requirements of this section capable of responding to the emergency is immediately available.

(3) Where the requirements of this section violate, or are inconsistent, with the terms or conditions of a grant, subvention, or agreement, provided that a good faith attempt has been made by the agency to change the terms or conditions of any grant, subvention, or agreement to authorize application of this section.

(4) Where the contractor is providing wholesale or bulk water, power, or natural gas, the conveyance or transmission of the same, or ancillary services, as required for assuring reliable services in accordance with good utility practice, provided that the purchase of the same may not practically be accomplished through the standard competitive bidding procedures; and further provided that this exemption does not apply to contractors providing direct retail services to end users.

(d) (1) If there is a difference in the cost to provide a certain benefit to a domestic partner or spouse, the contractor is not deemed to be in violation of this section so long as it permits the employee to pay any excess costs.

(2) The contractor is not deemed to discriminate in the provision of benefits if the contractor, in providing the benefits, pays the actual costs incurred in obtaining the benefit.

(3) In the event a contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the contractor may not be deemed to discriminate in the provision of benefits.

(4) For any contracts executed or amended on or after July 1, 2004, and prior to January 1, 2007, and to bid packages advertised and made available to the public, or any competitive or sealed bids received by the state, on or after July 1, 2004, and prior to January 1, 2007, unless and until those contracts or bid packages are amended after June 30, 2004, but prior to January 1, 2007, and would otherwise be subject to this section, a contractor may require an employee to pay the costs of providing additional benefits that are offered to comply with this section if an employee elects to have the additional benefits. This paragraph shall not be construed to permit a contractor to require an employee to cover the costs of providing any benefits, which have otherwise been provided to all employees regardless of marital or domestic partner status.

(e) A contractor is not deemed to be in violation of this section if the contractor does any of the following:

(1) Offers the same benefits to employees with domestic partners and employees with spouses and offers the same benefits to domestic partners and spouses of employees.

(2) Elects to provide the same benefits to individuals that are provided to employees' spouses and employees' domestic partners.

(3) Elects to provide benefits on a basis unrelated to an employee's marital status or domestic partnership status, including, but not limited to, allowing each employee to designate a legally domiciled member of the employee's household as being eligible for benefits.

(4) Elects not to provide benefits to employees based on their marital status or domestic partnership status, or elect not to provide benefits to employees' spouses and to employees' domestic partners.

(f) (1) Every contract subject to this chapter shall contain a statement by which the contractor certifies that the contractor is in compliance with this section.

(2) The department or other contracting agency shall enforce this section pursuant to its existing enforcement powers.

(3) (A) If a contractor falsely certifies that it is in compliance with this section, the contract with that contractor shall be subject to Article 9 (commencing with Section 10420), unless, within a time period specified by the department or other contracting agency, the contractor provides to the department or agency proof that it has complied, or is in the process of complying, with this section.

(B) The application of the remedies or penalties contained in Article 9 (commencing with Section 10420) to a contract subject to this chapter shall not preclude the application of any existing remedies otherwise available to the department or other contracting agency under its existing enforcement powers.

(g) Nothing in this section is intended to regulate the contracting practices of any local jurisdiction.

(h) This section shall be construed so as not to conflict with applicable federal laws, rules, or regulations. In the event that a court or agency of competent jurisdiction holds that federal law, rule, or regulation invalidates any clause, sentence, paragraph, or section of this code or the application thereof to any person or circumstances, it is the intent of the state that the court or agency sever that clause, sentence, paragraph, or section so that the remainder of this section shall remain in effect.

10295.5. (a) Notwithstanding any other provision of law, no state agency shall acquire or utilize sand, gravel, aggregates, or other minerals produced from a surface mining operation subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code), unless the operation is identified in the list published pursuant to subdivision (b) of Section 2717 of the Public Resources Code as

(1) An approved reclamation plan and financial assurances covering the affected surface mining operation.

(2) An appeal pending before the State Mining and Geology Board pursuant to subdivision (e) of Section 2770 of the Public Resources Code with respect to the reclamation plan or financial assurances.

(b) The department shall revise its procedures and specifications for the acquisition of sand, gravel, aggregates, and other minerals to ensure maximum compliance with this section.

(c) For purposes of this section, "minerals" means any naturally occurring chemical element or compound, or groups of elements and compounds, formed from inorganic processes and organic substances, including, but not limited to, coal, peat, and bituminous rock, but excluding geothermal resources, natural gas, and petroleum.

(d) The requirements of this section shall apply to mining operations on federal lands or Indian lands that are subject to the Surface Mining and Reclamation Act of 1975 (Chapter 9 (commencing with Section 2710) of Division 2 of the Public Resources Code) pursuant to a memorandum of understanding between the Department of Conservation and the federal agency having jurisdiction over the lands.

10296. Every contract entered into by any state agency for any purpose specified in subdivisions (a) through (d), inclusive, of Section 10295 shall contain a statement by which the contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the contractor within the immediately preceding two-year period because of the contractor's failure to comply with an order of a federal court which orders the contractor to comply with an order of the National Labor Relations Board. For purposes of this section, a finding of contempt does not include any finding which has been vacated, dismissed, or otherwise removed by the court because the contractor has complied with the order which was the basis for the finding. The state may rescind any contract in which the contractor falsely swears to the truth of the statement required by this section.

10297. The provisions of Section 10295 shall apply both to contracts awarded through competitive bidding and those not subject to competitive bidding. The department shall deny its approval of a contract awarded through competitive bidding if it finds that the contract does not meet the specifications or other conditions of the bidding process, or if any applicable statutes or regulations regarding competitive bidding have been violated. With regard to any contract not awarded through competitive bidding, the department shall ascertain whether the contract is subject to competitive bidding requirements, and if it finds that is the case, the department shall deny its approval. In making its determination on any contract, the department shall consider all other relevant factors, such as clarity of language and legality, and shall utilize its legal staff as necessary to facilitate the approval process.

10298. (a) The director may consolidate the needs of multiple state agencies for goods, information technology, and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State and local agencies may contract with suppliers awarded those contracts without further competitive bidding.

(b) The director may make the services of the department available, upon the terms and conditions agreed to, to any city, county, city and county, district, or other local governmental body or corporation empowered to expend public funds for the acquisition of goods, information technology, or services for assisting the agency in acquisitions conducted pursuant to Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6

(commencing with Section 12125). The state shall not incur financial responsibility in connection with contracting for local agencies under this section.

10299. (a) Notwithstanding any other provision of law, the director may consolidate the needs of multiple state agencies for information technology, goods and services, and, pursuant to the procedures established in Chapter 3 (commencing with Section 12100), establish contracts, master agreements, multiple award schedules, cooperative agreements, including agreements with entities outside the state, and other types of agreements that leverage the state's buying power, for acquisitions authorized under Chapter 2 (commencing with Section 10290), Chapter 3 (commencing with Section 12100), and Chapter 3.6 (commencing with Section 12125). State agencies and local agencies may contract with suppliers awarded the contracts without further competitive bidding.

(b) The director may make the services of the department available, upon the terms and conditions agreed upon, to any school district empowered to expend public funds. These school districts may, without further competitive bidding, utilize contracts, master agreements, multiple award schedules, cooperative agreements, or other types of agreements established by the department for use by school districts for the acquisition of information technology, goods, and services. The state shall incur no financial responsibility in connection with the contracting of local agencies under this section.

ARTICLE 3. COMPETITIVE BIDDING AND OTHER ACQUISITION PROCEDURES

10300. (a) A Customer and Supplier Advocate shall be established in the department as a resource to state agencies and departments, and suppliers seeking information regarding the state process, procedures, and regulations for bidding on state contracts, and as a resource to bidders seeking to file a protest on award in accordance with this chapter. The advocate shall, at a minimum, provide the following services to the protesting bidder:

(1) Assistance to customer departments and agencies regarding contracting rules and regulations, and acquisition resource options.

(2) Assistance to the bidder in assessing the validity of the bidder's proposed grounds of filing the protest in accordance with the terms of the solicitation, as well as statutory or regulatory guidelines governing the solicitation in question.

(3) Provision of information to the protesting bidder regarding avenues and options available to the bidder to proceed with a formal protest of the award.

(b) The advocate shall make services, as specified in this section, available on a timely basis to the protesting bidder.

(c) Notification to bidders regarding the availability of services by the advocate shall be included in the solicitation. This notification shall also outline procedures and timelines for bidders who may wish to engage the services of the advocate.

10301. Except in cases when the agency and the department agree that an article of a specified brand or trade name is the only article that will properly meet the needs of the agency, or in cases where the State Board of Control has made a determination pursuant to Section 10308, all contracts for the acquisition or lease of goods in an amount of twenty-five thousand dollars (\$25,000), or a higher amount as established by the director, shall be made or entered into with the lowest responsible bidder meeting specifications. For purposes of determining the lowest bid, the amount of sales tax shall be excluded from the total amount of the bid.

10302. Except in cases of emergency where immediate purchase of goods without bid is necessary for the protection of the public health, welfare, or safety, whenever the department contracts for goods in excess of twenty-five thousand dollars (\$25,000), or a higher amount as established by the director, the department shall advertise in the California State Contracts

Register the availability of its solicitation, and interested suppliers, upon request, shall be furnished with copies of the solicitation. In addition to advertising in the California State Contracts Register, the department shall post in a public place a copy of the solicitation, which shall remain posted until seven days after an award has been made. Whenever a contract in excess of twenty-five thousand dollars (\$25,000), or a higher amount as established by the director, is made under this section or Section 10301 without the taking of bids, the department shall prepare a written document stating the fact of the contract together with the facts requiring the contract of the goods without the taking of bids. This document shall be maintained by the department and shall be available as a public record.

10302.5. All product specifications that the department or any other state agency prepares for goods for any contract entered into by any state agency for the acquisition of goods under Section 10295 are not subject to the review and adoption procedure under Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

10302.6. Product specifications as prepared by the department or any other state agency shall not be written with the intent of excluding goods manufactured, produced, grown, or otherwise originating in California.

10303. The department shall adopt, publish and apply uniform standards of rating bidders, on the basis of questionnaires and required statements, with respect to contracts upon which each bidder is qualified to bid. The department may adopt and publish lists of qualified bidders. No list so adopted and published shall preclude a qualified bidder not on the list from submitting a bid or bids and from being awarded a contract or contracts as the successful bidder.

The department may remove, for a period not less than 90 calendar days, but not to exceed 360 calendar days, from any list of qualified bidders prepared by the department any bidder who, based upon his performance on contracts which he has previously been awarded by the state, has demonstrated a lack of reliability in complying with and completing such previously awarded contracts.

Any bidder temporarily removed under this section shall be returned to the list of qualified bidders at any time after the initial 90-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the bidder's previously demonstrated unreliability in completing state contracts, have been corrected.

10304. All bids shall be sealed and shall be publicly opened and read at the time set forth in the solicitation, provided any person present desires the bids to be so read. No bids shall be considered which have not been received in the office of the department prior to the closing time for bids set forth in the invitations to bids. The department shall maintain confidentiality regarding each bid until the public opening and reading takes place.

10305. After being opened the bids shall be available for public inspection and tabulations shall be completed within seven days.

10306. Whenever a contract or purchase order under this article is not to be awarded to the lowest bidder, the bidder shall be notified 24 hours prior to awarding the contract or purchase order to another bidder. Upon written request by any bidder who has submitted a bid, notice of the proposed award shall be posted in a public place in the offices of the department at least 24 hours prior to awarding the contract or purchase order. If prior to making the award, any bidder who has submitted a bid files a protest with the department against the awarding of the contract or purchase order on the ground that he or she is the lowest responsible bidder meeting

specifications, the contract or purchase order shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relative to the protest. In computing the 24-hour periods provided for in this section, Saturdays, Sundays, and legal holidays shall be excluded. Within 10 days after filing a protest, the protesting bidder shall file with the State Board of Control a full and complete written statement specifying in detail the ground of the protest and the facts in support thereof.

10307. The director shall establish statewide acquisition standards, the purpose of which shall be to ensure the necessary quality of goods acquired by or under the supervision of the department and to permit the consolidation of acquisitions in order to effect greater economies in state contracting.

10308. Except as provided otherwise in this chapter, every acquisition of goods in excess of one hundred dollars (\$100) for any state agency shall be made by or under the supervision of the department. However, the state agency may specify the quality of the goods to be acquired. If the department determines that the quality specified by the agency is inconsistent with the statewide standards established by the director under Section 10307, it shall change the request to make it consistent with the standards, and it shall notify the state agency, within a reasonable time, before a contract is issued. If the agency is of the opinion the interests of the state would not be served by the acquisition of goods of a lesser quality or different than that specified by the agency, the agency may request a hearing before the State Board of Control and the board shall determine which goods will best serve the interests of the state, whereupon the department shall issue a contract for the goods specified by the State Board of Control.

10308.5. Contractors shall certify in writing, under penalty of perjury, to the state agency awarding a contract, the minimum, if not exact, percentage of recycled content, both postconsumer material and secondary material as defined in Sections 12161 and 12200, in goods offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content. This section shall apply to all state contracts and, to the extent feasible, all federally funded contracts.

10309. Except as provided in Sections 10332 and 10333, no state agency may acquire goods in the open market, unless permission has been given by the department, upon a showing of the necessity therefor.

10310. Upon the request of the department, every state agency that is authorized by law to acquire goods shall designate some person in the agency whose duty it shall be to make reports to the department at times and in a manner as it may require.

10311. (a) An estimate or requisition approved by the state agency in control of the appropriation or fund against which an acquisition is to be charged, is full authority for any contract for goods of the quality specified by the agency or determined by the State Board of Control as provided in this article made pursuant thereto by the department.

(b) The department shall issue a call for bids within 30 days after receiving a requisition for any goods that are regularly acquired within this state. The period of closing time designated in the invitations for bids shall be exclusive of holidays and shall be extended to the next working day after a holiday.

(c) Except as provided in subdivision (d), after the closing date for receiving any bids within or without this state, the contract shall be awarded or the bids shall be rejected within 45 days unless a protest is filed as provided in Section 10306.

(d) After the 45-day time period prescribed by subdivision (c), the department may in its sound discretion either award the contract to the lowest responsible bidder meeting specifications who remains willing to accept the award or else reject all bids.

(e) The amendments made to this section at the 1987-88 Regular Session of the Legislature do not constitute a change in, but are declaratory of, existing law.

10312. Immediately upon the rendition of services or the delivery of goods, the disbursing officer shall transmit the invoice or demand for payment together with his or her sworn statement to the Controller. The sworn statement shall show that the services have been rendered and the goods delivered to the state agency in accordance with the contract and law.

10313. The director may make the services of the department under this article available, upon those terms and conditions as he or she may deem satisfactory, to any tax-supported public agency in the state, including a school district.

10314. Any contract for goods to be manufactured by the contractor specially for the state and not suitable for sale to others in the ordinary course of the contractor's business may provide, on such terms and conditions as the department deems necessary to protect the state's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the contractor.

10315. The department may rent, lease, construct, and maintain warehouses and make the rules and regulations that are necessary for the proper and economical making of state acquisitions.

10316. The department may insure in the name of the state any goods or merchandise belonging to the state which are stored in any warehouse or storage depot not under exclusive state control, in an amount sufficient to indemnify the state against loss or damage by fire. Premiums for such insurance shall be paid out of the Service Revolving Fund and prorated and added to the price of the goods or merchandise.

10317. Each person in the department who has personal supervision and control of any warehouse or storage depot wherein merchandise or goods belonging to the state are stored, shall execute to the people of the state a bond in the penal sum of five thousand dollars (\$5,000). Premiums on the bonds shall be paid by the state as are the premiums upon the bonds of state officers.

10318. No state agency or employee thereof shall draft or cause to be drafted, any specifications for bids, in connection with the acquisition or contemplated acquisition of any goods or textbooks for use in the day and evening elementary schools of the state, in such a manner as to limit the bidding directly or indirectly, to any one bidder.

Bidders may be required to furnish a bond or other indemnification to the state against claims or liability for patent infringement.

10319. To meet an emergency, goods of a perishable nature, in an amount not exceeding one hundred dollars (\$100) in value, may be acquired by a state agency without the permission of the department.

10320. (a) The department shall annually prepare a delegation program for district agricultural associations to be administered by the Department of Food and Agriculture and the department pursuant to the following criteria:

(1) The department shall annually review acquisitions to be included in the program and the amount of delegation for each type of acquisition.

(2) The department shall annually review with the Department of Food and Agriculture the aggregate limit for the delegation program.

(3) The department shall annually communicate with each fair eligible for the delegation program, information relating to the procedure to be followed for using the delegation, including, but not limited to, the things included in the delegation program.

(b) The Division of Fairs and Expositions in the Department of Food and Agriculture shall include, as part of its annual expenditure review and approval process presented to the Joint Committee on Fairs Allocation and Classification, a section describing the purchasing delegation authority granted to all district agricultural associations pursuant to subdivision (a). This information shall include, but need not be limited to, the annual amount of purchasing delegation authority requested by, and delegated to, each district agricultural association.

10320.5. (a) Commencing January 1, 1992, all state agencies subject to this chapter that enter into installment purchase or lease-purchase contracts shall make periodic payments, which shall include interest computed from a date no later than the acceptance date of the goods purchased pursuant to the contract. However, if the contract requires an acceptance test, interest shall be computed from a date no later than the first day of the successful acceptance test period. Unless otherwise provided for in the contract, periodic payments shall commence upon acceptance of the goods or, if the contract requires an acceptance test, as of the first day of the successful acceptance test period. Late charges shall accrue for any periodic payment not made to the contractor or its assigns from either the payment date provided in the contract or 60 days following the receipt of a valid invoice for the periodic payment, whichever is later. However, in the event any invoice is received prior to the acceptance date, the receipt date of the invoice shall be construed to be the acceptance date. Late charges under this section shall be assessed using the interest rate as specified in Section 927.6 of the Government Code.

(b) The department is authorized to refinance installment purchase contracts when, in the determination of the department, it is financially beneficial to the state to do so.

10321. (a) (1) The Legislature finds and declares that fairs are a valuable community resource and recognizes that local businesses and local communities make valuable contributions to fairs that include direct and indirect support of fair programs. The Legislature further finds and declares that local businesses often provide opportunity purchases to local fairs that, for similar things available through the state purchasing program, may be purchased locally at a price equivalent to or less than that available through the state purchasing program.

(2) Notwithstanding any other provision of law, the Department of Food and Agriculture shall develop criteria to be applied for opportunity purchases that are made by district agricultural associations, county and citrus fruit fairs, and the California Exposition and State Fair, individually or cooperatively.

(3) As used in this subdivision, opportunity purchases means purchases made locally, either individually or cooperatively, at a price equal to or less than the price available through the state purchasing program on or off state contract.

(b) (1) The Legislature finds and declares that district agricultural associations and county and citrus fruit fairs often do not have large, full-time staffs, and consequently the generally applicable

expenditure reporting requirements contained in the State Administrative Manual (SAM) can represent an unreasonable paperwork burden upon those associations and fairs.

(2) Notwithstanding any other provision of law, the Secretary of Food and Agriculture may develop, in consultation with the Department of General Services, an alternative expenditure reporting procedure from the State Administrative Manual applicable to district agricultural associations and county and citrus fruit fairs with annual reportable expenditures of not more than one million dollars (\$1,000,000). This procedure, at a minimum, shall maintain an audit trail and protect the ability of state auditors to confirm the proper use of state funds.

10322. Any person who supplies any state agency with livestock products derived from any of the animals enumerated in Section 19501 of the Food and Agricultural Code shall file with the department a sworn statement that the animals were slaughtered by methods defined in that section and in Sections 19502 and 19503 of the Food and Agricultural Code.

10323. To assist the department and other state agencies in the enforcement of the provisions of Section 19501 of the Food and Agricultural Code, the Department of Food and Agriculture shall provide, through cooperation with the United States Department of Agriculture in the enforcement of Public Law 85-765 and by means of appropriate regulations, suitable methods of identifying the carcasses of animals inspected and passed under Chapter 4 (commencing with Section 18651) of Part 3 of Division 9 of the Food and Agricultural Code that have been slaughtered by methods prescribed by Sections 19501, 19502, and 19503 of that code.

10325. Each quarter, the department shall, upon request, provide each city, county, city and county, district, local government body, or public corporation empowered to expend public funds for the acquisition of consumable goods and other interested parties with a list of those items available for acquisition under Section 10324. The department may supplement the quarterly lists with a monthly supplement of changes, additions and deletions. Terms, conditions, and specifications shall be provided upon request.

10326. In establishing bid specifications for the acquisition of motor vehicles and in determining the lowest responsible bidder, consideration may be given by the state to the probable resale value of the vehicles as determined by recognized published used car marketing guides and other established historical evidence of future used motor vehicle value or, in lieu thereof, by contractual guarantee of the apparent low bidder that the resale value of the vehicle will be no less in proportion to bid price than any other comparable vehicle complying with specifications for which a bid was received.

10327. Except for motor vehicles described in Section 43805 of the Health and Safety Code, the provisions of Article 1 (commencing with Section 43800) of Chapter 4 of Part 5 of Division 26 of the Health and Safety Code shall govern the acquisition of all motor vehicles by the state to the extent that the department determines that these low-emission vehicles are reasonable to meet state needs pursuant to Section 43804 of the Health and Safety Code.

10328. The bid requirements prescribed in this article are not applicable to contracts for the acquisition of the following:

(a) Fluid milk and fluid cream, the price of which is established in accordance with Section 61871 of the Food and Agricultural Code.

(b) Fruits and vegetables procured under contract with growers for the use of canneries maintained and operated by state agencies, if these canneries are maintained and operated so

that their canned products will meet the standards prescribed for similar commercially packed canned products under federal law.

(c) Agricultural surpluses that are available to the state or its agencies by any governmental agency.

10329. No person shall willfully split a single transaction into a series of transactions for the purposes evading the bidding requirements of this article.

10330. On July 1 of each year, the department shall establish the minimum dollar level below which authority to acquire goods shall be delegated to state agencies that meet the requirements of Section 10333. The level established at eight hundred dollars (\$800) on January 1, 1983, and adjusted on July 1, 1983, pursuant to former Section 14792.1 of the Government Code, shall be retained and adjusted each July 1 thereafter to reflect, at a minimum, the percentage change from April 1 of the prior year to April 1 of the current year in the California Consumer Price Index for all items, as determined by the California Department of Industrial Relations.

10331. The department shall establish a program for delegating authority to acquire goods to state agencies that meet the requirements of Section 10333. Each delegation shall be subject to annual review by the department. Delegated authority may be withdrawn at any time the department finds that the state agency to which authority has been delegated is not in compliance with the requirements of Section 10333.

10332. Any state agency that receives delegated authority to acquire goods shall be authorized, at a minimum, to make the following types of acquisitions:

(a) Acquisitions not exceeding the dollar value established pursuant to Section 10330.

(b) Acquisitions in any amount of goods available under an unexpired statewide or regional contract. Acquisitions of goods for which a valid statewide or regional contract is in effect may not be made, without the approval of the office, from a supplier other than the supplier with whom the state has a valid contract.

(c) Acquisitions in any amount of goods that state agencies are required, by Section 2807 of the Penal Code, to acquire from the Prison Industry Authority.

(d) Acquisitions not exceeding the dollar amount, established pursuant to Section 10330, of goods designated in price schedules that the office has established with suppliers. Acquisitions not exceeding the dollar amount, established pursuant to Section 10330, of goods designated in price schedules may be made from a supplier other than the supplier specified on a price schedule if another supplier offers the same or equivalent goods at a price lower than the price established in the price schedule. The agency shall notify the office prior to making the acquisition. The acquisition may be made 48 hours after receipt of the notice by the office unless the office advises the agency that the goods to be acquired are not the same or equivalent to the goods specified on a price schedule.

(e) Acquisitions not exceeding the dollar value, established pursuant to Section 10330, of goods that are available from the state warehouses but which the state agency can acquire from another supplier at a price lower than the price charged by the department. The agency shall notify the office prior to making the acquisition. The acquisition may be made 48 hours after receipt of the notice by the office unless the office advises the agency that the goods to be acquired are not the same or equivalent to the goods available from the state warehouses.

10333. (a) The department shall delegate purchasing authority, as specified in Section 10332, to any state agency that does all of the following:

(1) Designates an agency officer as responsible and directly accountable for the agency's purchasing program.

(2) Establishes written policies and procedures, including procedures for ensuring and documenting competitive purchasing, complying with purchasing standards established pursuant to Section 10307, inspecting acquired products for compliance with specifications, reporting contractor failures to deliver products as specified in contracts, ensuring that agency contracting personnel are free from conflict of interest, and complying with other provisions of law as the department may require.

(3) Establishes procedures for complying with the provisions of the Small Business Procurement and Contract Act. The procedures shall include procedures for meeting the goals for the extent of participation of small businesses in state contracting as established by the department pursuant to subdivision (a) of Section 14838 of the Government Code.

(4) Establishes policies for training personnel in purchasing law and procedures, controlling and reviewing purchasing practices, auditing purchasing activities, and delegating purchasing authority within the agency.

(5) Reports the data to the office that the department may require.

(b) The department shall conduct an audit of each state agency to which purchasing authority has been delegated at least once in each three-year period. The authority to acquire goods may be withdrawn by the department at any time that the department finds that the state agency to which authority has been delegated is not in compliance with the requirements of this section.

10334. (a) No state employee shall acquire any goods from the state, unless the goods are offered to the general public in the regular course of the state's business on the same terms and conditions as those applicable to the employee. "State employee," as used in this section, means any employee of the state included within Section 82009 of the Government Code, and all officers and employees included within Section 4 of Article VII of the California Constitution, except those persons excluded from the definition of "designated employee" under the last paragraph of Section 82019 of the Government Code.

(b) Notwithstanding subdivision (a), any peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, employed by the State of California for a period of more than 120 months who has been duly retired through a service retirement or a peace officer retiring from a job-incurred disability not related to a mental or emotional disorder and who has been granted the legal right to carry a concealed firearm pursuant to subdivision (a) of Section 12027 of the Penal Code may be authorized by the person's department head to purchase his or her state-issued handgun. Disability retired peace officers need not meet the 120-month employment requirement. The cost of the handgun shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the handgun issued as determined by the appointing power, plus a charge for the cost of handling. The retiring officer shall request to purchase his or her handgun in writing to the department within 30 calendar days of his or her retirement date.

(c) Notwithstanding subdivision (a), any peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code employed by the State of California who is authorized to carry firearms may purchase his or her state-issued service firearm if the person's department head directs the department to change its state-issued service weapon system. The cost of the service firearm shall be the fair market value as listed in the annual Blue Book of Gun Values or replacement cost, whichever is less, of the firearm issued as determined by the department head, plus a charge for the cost of handling. The requesting officer shall request to purchase his or her firearm in writing to the department within 10 calendar days of receiving the new state-issued weapon.

ARTICLE 4. CONTRACTS FOR SERVICES

10335. (a) This article shall apply to all contracts, including amendments, entered into by any state agency for services to be rendered to the state, whether or not the services involve the furnishing or use of equipment, materials, or supplies or are performed by an independent contractor. Except as provided in Section 10351, all contracts subject to this article are of no

effect unless and until approved by the department. Each contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of approval. This article shall apply to any state agency that by general or specific statute is expressly or impliedly authorized to enter into the transactions referred to in this section. This article shall not apply to contracts for the construction, alteration, improvement, repair, or maintenance of real or personal property, contracts for services subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, to contracts that are listed as exceptions in Section 10295, contracts of less than five thousand dollars (\$5,000) in amount, contracts of less than five thousand dollars (\$5,000) where only per diem or travel expenses, or a combination thereof, are to be paid, contracts between state agencies, or contracts between a state agency and local agency or federal agency.

(b) In exercising its authority under this article with respect to contracts for the services of legal counsel, other than the Attorney General, entered into by any state agency that is subject to Section 11042 or Section 11043 of the Government Code, the department, as a condition of approval of the contract, shall require the state agency to demonstrate that the consent of the Attorney General to the employment of the other counsel has been granted pursuant to Section 11040 of the Government Code. This consent shall not be construed in a manner that would authorize the Attorney General to establish a separate program for reviewing and approving contracts in the place of, or in addition to, the program administered by the department pursuant to this article.

(c) Until January 1, 2001, the department shall maintain a list of contracts approved pursuant to subdivision (b). This list shall be filed quarterly with the Senate Committee on Budget and Fiscal Review and the Assembly Committee on Budget. The list shall be limited to contracts with a consideration in excess of twenty thousand dollars (\$20,000) during the life of the contract and shall include sufficient information to identify the provider of legal services, the length of each contract, applicable hourly rates, and the need for the services. The department shall add a contract that meets these conditions to the list within 10 days after approval. A copy of the list shall be made available to any requester. The department may charge a fee to cover the cost of supplying the list as provided in Section 6253 of the Government Code.

(d) Contracts subject to the approval of the department shall also have the department's approval for a modification or amendment thereto, with the following exceptions:

(1) An amendment to a contract that only extends the original time for completion of performance for a period of one year or less is exempt. If the original contract was subject to approval by the department, one fully executed copy including transmittal document, explaining the reason for the extension, shall be sent to the legal office of the department. A contract may only be amended once under this exemption.

(2) Contracts let or awarded on the basis of a law requiring competitive bidding may be modified or amended only if the contract so provides or if authorized by the law requiring competitive bidding.

(3) If an amendment to a contract has the effect of giving the contract as amended an increase in monetary amount, or an agreement by the state to indemnify or save harmless any person, the amendment shall be approved by the department.

10335.5. (a) "Consulting services contract," as used in this article, means services that do all of the following:

(1) Are of an advisory nature.

(2) Provide a recommended course of action or personal expertise.

(3) Have an end product that is basically a transmittal of information either written or verbal and that is related to the governmental functions of state agency administration and management and program management or innovation.

(4) Are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

The product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

(b) "Consulting services contract" does not include any of the following:

(1) Contracts between a state agency and the federal government.

(2) Contracts with local agencies, as defined in Section 2211 of the Revenue and Taxation Code, to subvene federal funds for which no matching state funds are required.

(c) The following consulting services contracts are exempt from the advertising and bidding requirements of this article:

(1) Contracts that are temporary or time-limited appointments to a nontesting civil service classification for the purpose of meeting a time-limited employment need. Selection and compensation for these appointments shall be made in accordance with state civil service requirements. Payment under a consulting service contract may be on the basis of each hour or day devoted to the task or in one lump sum for the end product.

(2) Contracts that can only be performed by a public entity as defined in subdivision (b) of Section 605 of the Unemployment Insurance Code.

(3) Contracts solely for the purpose of obtaining expert witnesses for litigation.

(4) Contracts for legal defense, legal advice, or legal services.

(5) Contracts in an amount of less than five thousand dollars (\$5,000).

(6) Contracts entered into pursuant to Section 14838.5 of the Government Code.

10335.7. "State agency," as used in this article, means every state office, department, division, bureau, board, or commission, but does not include the Legislature, the courts, or any agency in the judicial branch of government.

10336. The Department of Finance may establish those controls over approval of contracts by the department as are necessary to assure that approval is consistent with program and budgetary determinations of the Department of Finance. The controls established under this section shall not be constructed in a fashion or be construed in a manner which would authorize the Department of Finance to establish a separate program for reviewing and approving contracts in the place of, or in addition to, the program administered by the department pursuant to this article. The Department of Finance, when it has reason to believe that a proposed contract is not in compliance with its program and budgetary determinations, may direct a state agency to transmit the contract to it for review. It is the intent of the Legislature, however, that any review of this type shall be restricted to individual contracts and shall occur only if no alternative course of action satisfactory to the Department of Finance is available.

10337. (a) The State Personnel Board may establish such standards and controls over approval of contracts by the Department of General Services as are necessary to assure that the approval is consistent with the merit employment principles and requirements contained in Article VII of the California Constitution. The substantive provisions of the standards shall be established at the discretion of the State Personnel Board. The specific procedures for contract review pursuant to such standards shall be established jointly by the board and the department.

It is the intent of the Legislature that except as provided in this section, the standards and controls established under this subdivision shall not be constructed in such a fashion or construed in such a manner as to authorize the State Personnel Board to establish a separate program for reviewing and approving each and every contract in the place of, or in addition to, the program administered by the Department of General Services pursuant to this article. The State Personnel Board may, when it has reason to believe that a proposed contract is not in compliance with the provisions of Section 19130 of the Government Code, and shall, when requested to do so by an employee organization representing state employees, direct a state agency to transmit the contract to it for review.

(b) The State Personnel Board shall direct any state agency to transmit to it for review any contract proposed or executed pursuant to subdivision (a) of Section 19130 of the Government Code, if the review has been requested by an employee organization notified pursuant to Section 19131 of the Government Code. The review shall occur prior to any review conducted by the Department of General Services. The board shall restrict its review to the question as to whether the contract complies with the provisions of subdivision (a) of Section 19130 of the Government Code and any additional standards and controls established pursuant to subdivision (a) of this section.

The board may disapprove the contract only if it determines that the contract does not comply.

The board shall delegate the review of such a contract to the executive officer of the board. Within 15 days of its receipt, the executive officer shall notify the employee organization which requested the review whether he or she intends to approve or disapprove it. If the employee organization requests it, the executive officer shall grant the employee organization the opportunity to present its case against the contract and the reasons why the contract should be referred to the board for a hearing. Upon a showing of good cause by the employee organization, the executive officer shall schedule the disputed contract for a hearing before the board for the purpose of receiving evidence and hearing arguments concerning the propriety of the disputed contract. In any case, the executive officer shall approve or disapprove the contract or refer it to the board for a hearing within 30 days of its receipt. The reasons for a decision by the executive officer, or the board, approving or disapproving the contract shall be stated in writing.

(c) A contract proposed or executed pursuant to subdivision (b) of Section 19130 of the Government Code shall be reviewed by the State Personnel Board if the board receives a request to conduct such a review from an employee organization representing state employees. Any such review shall be restricted to the question as to whether the contract complies with the provisions of subdivision (b) of Section 19130 of the Government Code. The board shall delegate the review of such a contract to the executive officer of the board. If the employee organization requests it, the executive officer shall grant the employee organization the opportunity to present its case against the contract and the reasons why the contract should be referred to the board for a hearing. Upon a showing of good cause by the employee organization, the executive officer shall schedule the disputed contract for a hearing before the board for the purpose of receiving evidence and hearing arguments concerning the propriety of the disputed contract. The executive officer shall approve or disapprove the contract or refer it to the board for a hearing within 30 days of its receipt. The reasons for the decision by the executive officer, or the board, approving or disapproving the contract shall be stated in writing.

(d) Contracts subject to State Personnel Board review under this section shall not become effective unless and until approval is granted.

10339. (a) Subject to the provisions of Section 10348, no state agency shall draft, or cause to be drafted, any invitation to bid or request for proposal, in connection with the awarding of a contract, in a manner that limits the bidding directly or indirectly to any one bidder.

(b) Any contract awarded in violation of subdivision (a) shall be void.

10340. (a) Except as provided by subdivision (b), state agencies shall secure at least three competitive bids or proposals for each contract.

(b) Three competitive bids or proposals are not required in any of the following cases:

(1) 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.

(2) When the agency awarding the contract has advertised the contract in the California State Contracts Register and has solicited all potential contractors known to the agency, but has received less than three bids or proposals.

(3) The contract is with another state agency, a local governmental entity, an auxiliary organization of the California State University, an auxiliary organization of a California community college, a foundation organized to support the Board of Governors of the California Community Colleges, or an auxiliary organization of the Student Aid Commission established pursuant to

Section 69522 of the Education Code. These contracts, however, may not be used to circumvent the competitive bidding requirements of this article.

(4) The contract meets the conditions prescribed by the department pursuant to subdivision (a) of Section 10348.

(5) The contract has been awarded without advertising and calling for bids pursuant to Section 19404 of the Welfare and Institutions Code.

(6) Contracts entered into pursuant to Section 14838.5 of the Government Code.

(7) Contracts for the development, maintenance, administration, or use of licensing or proficiency testing examinations.

(c) Any agency which has received less than three bids or proposals on a contract shall document, in a manner prescribed by the department, the names and addresses of the firms or individuals it solicited for bids or proposals.

10341. Whenever a contract subject to the provisions of this article is awarded under a procedure which provides for competitive bidding, the bids shall be publicly opened at the time stated in the invitation for bids and the dollar amount of each bid shall be read. No bids shall be considered which have not been received at the place, and prior to the closing time for bids, stated in the invitation for bids.

10342. After opening, all bids shall be available for public inspection.

10344. (a) Contracts subject to the provisions of this article may be awarded under a procedure which makes use of a request for proposal. State agencies that use this procedure shall include in the request for proposal a clear, precise description of the work to be performed or services to be provided, a description of the format that proposals shall follow and the elements they shall contain, the standards the agency will use in evaluating proposals, the date on which proposals are due and the timetable the agency will follow in reviewing and evaluating them.

State agencies which use a procedure that makes use of a request for proposal shall evaluate proposals and award contracts in accordance with the provisions of subdivision (b) or (c). No proposals shall be considered that have not been received at the place, and prior to the closing time, stated in the request for proposal.

(b) State agencies that use the evaluation and selection procedure in this subdivision shall include in the request for proposal, in addition to the information required by subdivision (a), a requirement that bidders submit their proposals with the bid price and all cost information in a separate, sealed envelope.

Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals received shall be reviewed to determine those that meet the format requirements and the standards specified in the request for proposal.

(2) The sealed envelopes containing the bid price and cost information for those proposals that meet the format requirements and standards shall then be publicly opened and read.

(3) The contract shall be awarded to the lowest responsible bidder meeting the standards.

(c) State agencies that use the evaluation and selection procedure in this subdivision shall include in the request for proposal, in addition to the information required by subdivision (a), a description of the methods that will be used in evaluating and scoring the proposals. Any evaluation and scoring method shall ensure that substantial weight in relationship to all other criteria utilized shall be given to the contract price proposed by the bidder.

Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals shall be reviewed to determine which meet the format requirements specified in the request for proposal.

(2) All proposals meeting the formal requirements shall then be submitted to an agency evaluation committee which shall evaluate and score the proposals using the methods specified in the request for proposal. All proposals and all evaluation and scoring sheets shall be available for public inspection at the conclusion of the committee scoring process.

(3) The contract shall be awarded to the bidder whose proposal is given the highest score by the evaluation committee.

(d) Nothing in this section shall require the awarding of the contract if no proposals are received containing bids offering a contract price that in the opinion of the state agency is a reasonable price.

10344.1. The Department of Personnel Administration, with respect to contracts it enters into for state employees for employee benefits, occupational health and safety, training services, or any combination thereof, shall provide all qualified bidders with a fair opportunity to enter the bidding process, therefore stimulating competition in a manner conducive to sound fiscal practices. The Department of Personnel Administration shall make available to any member of the public its guidelines for awarding these contracts, and to the extent feasible, implement the objectives set forth in Section 10351.

10345. (a) Whenever a contract is awarded under a procedure providing for competitive bidding, but the contract is not to be awarded to the low bidder, the low bidder shall be given notice five working days prior to the award of the contract by telegram, electronic facsimile transmission, overnight courier, Internet transmission, or personal delivery.

(1) Upon written request by any bidder who has submitted a bid, notice of the proposed award shall be posted in a place accessible by the general public, including any Internet site identified in the invitation for bids at least five working days prior to awarding the contract.

(2) If, prior to the award, any bidder files a protest with the awarding state agency and the department protesting the award of the contract on the grounds that he or she is the lowest responsible bidder meeting the specifications for the contract, the contract shall not be awarded until either the protest has been withdrawn or the department has decided the matter.

(3) Within five days after filing the protest, the protesting bidder shall file with the department and the awarding state agency a full and complete written statement specifying the grounds for the protest.

(b) Contracts awarded under the provisions of Section 10344 shall be awarded only after a notice of the proposed award has been posted in a place accessible by the general public, including any Internet site identified in the request for proposal, for five working days.

(1) If, prior to the award, any bidder files a protest with the awarding state agency and the department against the awarding of the contract, the contract shall not be awarded until either the protest has been withdrawn or the department has decided the matter.

(2) Within five days after filing the protest, the protesting bidder shall file with the department and awarding state agency a full and complete written statement specifying the grounds for the protest. Protests shall be limited to the following grounds:

(A) The state agency failed to follow the procedures specified in either subdivision (b) or (c) of Section 10344.

(B) The state agency failed to apply correctly the standards for reviewing the format requirements or evaluating the proposals as specified in the request for proposal.

(C) The state agency used the evaluation and selection procedure in subdivision (b) of Section 10344, but is proposing to award the contract to a bidder other than the lowest responsible bidder.

(D) The state agency used the evaluation and selection procedure in subdivision (c) of Section 10344, but failed to follow the methods for evaluating and scoring the proposals specified in the request for proposal.

(E) The state agency used the evaluation and selection procedure in subdivision (c) of Section 10344, but is proposing to award the contract to a bidder other than the bidder given the highest score by the state agency evaluation committee.

(c) The department shall establish written procedures for deciding protests under this section.

10346. Contracts may provide for progress payments to contractors for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the contract amount shall be withheld pending final completion of the contract. However, if the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task. No state agency shall make progress payments on a contract unless it first has established procedures, approved by the department, which will ensure that the work or services contracted are being delivered in accordance with the contract.

10348. The department shall prescribe the following:

(a) The conditions under which a contract may be awarded without competition and the methods and criteria which shall be used in determining the reasonableness of contract costs when a contract is awarded without competition.

(b) Any special requirements for evaluating multiple-year contracts which the department deems necessary to protect the financial interest of the state.

(c) For contracts of less than twenty thousand dollars (\$20,000), the conditions under which some or all of the provisions of this article may be waived in order to assist agencies in obtaining services and consultant services in an efficient and timely manner.

10348.5. Each state agency shall designate at least one currently existing person or position within the state agency as a contract manager. Every contract manager shall have knowledge of legal contractual arrangements.

10349. The Department of Personnel Administration shall establish a program for training state agency contracting personnel in contract administration and contract management. The cost of training state agency contracting personnel shall be paid by state agencies out of their appropriations for personnel training. The Department of Personnel Administration shall, prior to establishing the training program required by this section, consult with the department concerning the training curriculum and the development of a training manual on contract administration.

10351. (a) The department shall exempt from its approval contracts under seventy-five thousand dollars (\$75,000) that any state agency awards if the state agency does all of the following:

(1) Designates an agency officer as responsible and directly accountable for the agency's contracting program.

(2) Establishes written policies and procedures and a management system that will ensure the state agency's contracting activities comply with applicable provisions of law and regulations and that it has demonstrated the ability to carry out these policies and procedures and to implement the management system.

(3) Establishes a plan for ensuring that contracting personnel are adequately trained in contract administration and contract management.

(4) Conducts an audit every two years of the contracting program and reports to the department as it may require.

(5) Establishes procedures for reporting to the department and the Legislature on such contracts as the Legislature may require in the Budget Act.

(b) Any state agency may request the department to exempt from its approval classes or types of contracts under this section. When the department receives a request but refuses to grant the exemption, it shall state in writing the reasons for the refusal. It is the intent of the Legislature that the department shall actively implement the provisions of this section and shall exempt from its approval as wide a range of classes or types of contracts as is consistent with proper administrative controls and the best interests of the state.

10352. (a) The department shall conduct a quality control review of the audit of the contracting program required by Section 10351.

(b) The exemption provided by Section 10351 may be withdrawn by the department at any time that the department finds that the state agency to which the exemption has been granted is out of compliance with the requirements of Section 10351. In any case where the exemption is withdrawn, the department shall state in writing, the reasons for the withdrawal and shall specify the actions the state agency is required to take before the exemption again may be requested.

10353. A contract in an amount in excess of two hundred thousand dollars (\$200,000) that is governed by the provisions of this part shall contain a provision requiring the contractor to give priority consideration in filling vacancies in positions funded by the contract to qualified recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, in accordance with Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code.

This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be applicable to any contracts for a project as defined in Section 10105.

This section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code shall not be construed so as to do any of the following:

- (a) Interfere with or create a violation of the terms of valid collective bargaining agreements.
- (b) Require the contractor to hire an unqualified recipient of aid.
- (c) Interfere with, or create a violation of, any federal affirmative action obligation of a contractor for hiring disabled veterans or veterans of the Vietnam era.
- (d) Interfere with, or create a violation of, the requirements of Section 12990 of the Government Code.

If waivers are deemed necessary to implement this section and Article 3.9 (commencing with Section 11349) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, and if the State Department of Social Services has not obtained these waivers from the federal government by March 1, 1985, the department shall report on the barriers to the waivers and the expected date of waiver approval.

This section is not applicable to consulting services contracts.

10353.5. (a) Any contract for legal services shall contain the following provisions:

- (1) The contractor shall agree to adhere to legal cost and billing guidelines designated by the state agency.
- (2) The contractor shall adhere to litigation plans designated by the state agency.
- (3) The contractor shall adhere to case phasing of activities designated by the state agency.
- (4) The contractor shall submit and adhere to legal budgets as designated by the state agency.
- (5) The contractor shall maintain legal malpractice insurance in an amount not less than the amount designated by the state agency.
- (6) The contractor shall submit to legal bill audits and law firm audits if requested by the state agency. The audits may be conducted by employees or designees of the state agency or by any legal cost control providers retained by the state agency for that purpose.

(b) A contractor may be required to submit to a legal cost and utilization review, as determined by the state agency.

(c) As used in this section, the following definitions apply:

- (1) "Legal bill audits," means an evaluation and analysis of the reasonableness of particular legal bills submitted to a state agency for reimbursement.
- (2) "Law firm audit," means a review of law firm files applicable to legal services provided to a state agency for a particular time period.
- (3) "Legal cost and utilization review," means a review performed by the state agency or its legal cost provider of the utilization and billing practices of a contractor for the purpose of developing or revising guidelines to be followed prospectively by the contractor in representing the state agency.

(4) "Contract for legal service," shall include any contract between a state agency and any law firm, professional corporation, law firm partnership, or individual attorney to perform legal work on behalf of the state agency.

(5) "Legal cost control provider," means any corporation, professional corporation, partnership, or sole proprietorship which possesses the following qualifications:

(A) Maintains an office in the state.

(B) Is authorized to do business in the state.

(C) Has existed as a legal cost control provider for at least two complete, successive years, as evidenced by filings of tax returns.

(D) All legal cost control services are provided by attorneys.

(E) All attorneys providing the legal cost control services are admitted to practice in this state.

(F) All attorneys have been admitted to practice in this state for a minimum of five years prior to the performance of any legal cost control services for any state agency.

(G) Any legal cost control provider shall maintain professional liability insurance in the amount designated by the state agency.

10354. Contractors shall certify in writing, under penalty of perjury, to the state agency awarding a contract, the minimum, if not exact, percentage of recycled content, both postconsumer material and secondary material as defined in Sections 12161 and 12200, in materials, goods, or supplies offered or products used in the performance of the contract, regardless of whether the product meets the required recycled product percentage as defined in Sections 12161 and 12200. The contractor may certify that the product contains zero recycled content. This section shall apply to all state contracts and, to the extent feasible, all federally funded contracts.

10359. (a) Each state agency shall annually prepare a report pursuant to this section that includes a list of the consulting services contracts that it has entered into during the previous fiscal year. The listing shall include the following information:

(1) The name and identification of each contractor.

(2) The type of bidding entered into, the number of bidders, whether the low bidder was accepted, and if the low bidder was not accepted, an explanation of why another contractor was selected.

(3) The amount of the contract price.

(4) Whether the contract was a sole-source contract, and why the contract was a sole-source contract.

(5) Justification for entering into each consulting services contract.

(6) The purpose of the contract and the potential beneficiaries.

(7) The date when the initial contract was signed, and the date when the work began and was completed.

The report shall also include a separate listing of consultant contracts completed during that fiscal year, with the same information as above.

(b) The report this section requires shall also include a list of any contracts underway during that fiscal year on which any change was made regarding the following:

(1) The completion date of the contract.

(2) The amount of money to be received by the contractor, if it exceeds 3 percent of the original contract price.

(3) The purpose of the contract or duties of the contractor. A brief explanation shall be given if the change in purpose is significant.

(c) Copies of the annual report shall be sent within 60 working days after the end of the previous fiscal year to the Legislative Analyst, the Department of Finance, the Department of General Services, the State Auditor, the Joint Legislative Budget Committee, the Joint Legislative Audit Committee, the Senate Appropriations Committee, and the Assembly Appropriations Committee.

(d) State agencies may not use the temporary budget allocation process as a means of circumventing the requirements of this section.

(e) Within 120 working days after the close of the fiscal year, the department shall furnish to the officials and committees listed in subdivision (c), a list of the departments and agencies that have not submitted the required report specified in this section.

(f) The department shall annually submit to the Legislature, the Legislative Analyst, the Department of Finance, and the Auditor General, a report describing the information furnished to the department pursuant to this section.

10365.5. (a) No person, firm, or subsidiary thereof who has been awarded a consulting services contract may submit a bid for, nor be awarded a contract for, the provision of services, procurement of goods or supplies, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of the consulting services contract.

(b) Subdivision (a) does not apply to any person, firm, or subsidiary thereof who is awarded a subcontract of a consulting services contract which amounts to no more than 10 percent of the total monetary value of the consulting services contract.

(c) Subdivisions (a) and (b) do not apply to consulting services contracts subject to Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

10367. (a) Each contractor shall be advised in writing on the standard contract form that his or her performance, or the firm's performance under the contract will be evaluate'.

(b) The department shall use standardized evaluation forms and make them available to every state agency. Each state agency shall use post-evaluation forms to evaluate all consulting services contracts totaling five thousand dollars (\$5,000) or more.

The department shall devise standards and criteria for the post-evaluation forms. These standardized post-evaluation forms shall consist of a form for assessing the need and value of the consulting services contract to the state, and a form for assessing the usability and utility of the completed consulting services contract.

10369. (a) Each state agency shall conduct a post-evaluation, by completing the post-evaluation form, of each consulting services contract totaling five thousand dollars (\$5,000) or more that it executes.

(b) The agency shall evaluate the performance of the contractor in doing the work or delivering the services for which the contract was awarded. The agency shall report on all of the following:

(1) Whether the contracted work or services were completed as specified in the contract, and reasons for and amount of any cost overruns or delayed completions.

(2) Whether the contracted work or services met the quality standards specified in the contract.

(3) Whether the contractor fulfilled all the requirements of the contract and if not, in what ways the contractor did not fulfill the contract.

(4) Factors outside the control of the contractor that caused difficulties in contractor performance.

(5) Other information the department may require.

(6) How the contract results and findings will be utilized to meet the agency goals.

(c) If the contractor's performance was judged unsatisfactory on any of the factors specified in subdivision (b) and was not mitigated by circumstances specified in paragraph (4) of subdivision (b), the evaluation shall be considered unsatisfactory for the purposes of subdivisions (e) and (f).

(d) The post-evaluation shall be prepared within 60 days of the completion of the contract.

(e) Post-evaluations shall remain on file at the offices of the awarding state agency for a period of 36 months following contract completion. If the contractor did not satisfactorily perform the work or service specified in the contract, the state agency conducting the evaluation shall place one copy of the evaluation form in the state agency's contract file and send one copy of the form to the department within five working days of the completion of the evaluation.

(f) Upon filing an unsatisfactory evaluation with the department, the state agency shall notify and send a copy of the evaluation to the contractor within 15 days. The contractor shall have the right, within 30 days after receipt, to submit to the awarding state agency and the department, a

written response statement that shall be filed with the evaluation in the state agency's contract file and in the department.

10370. The evaluations and contractor responses on file with the state agencies and the department shall not be public records. The department shall act as a central depository for all state agencies making evaluation or desiring information on a contractor's record with the state and shall send a copy of any post-evaluation report and response to the contracting manager or contracting officer of any state agency upon request. The post-evaluations and contractor responses shall remain on file for a period of 36 months only.

Failure by the awarding state agency to send a negative post-evaluation to the department may be grounds for rejection of future contracts or modification of exemptions.

10371. The following provisions shall apply to all consulting services contracts:

(a) Each state agency shall, regardless of the fiscal amount involved, use available private resources only when the quality of work of private resources is of at least equal quality compared with the state agency operated resources.

(b) Any state agency that enters into or expects to enter into more than one consulting services contract with the same individual, business firm, or corporation within a 12-month period for an aggregate amount of twelve thousand five hundred dollars (\$12,500) or more, shall notify, in writing, the department and shall have each contract that exceeds an aggregate amount of twelve thousand five hundred dollars (\$12,500) approved by the department.

(c) Each state agency shall, prior to signing a consulting services contract totaling five thousand dollars (\$5,000) or more, prepare detailed criteria and a mandatory progress schedule for the performance of the contract and shall require each selected contractor to provide a detailed analysis of the costs of performing the contract.

(d) Except in an emergency, no consulting services contract shall be commenced prior to formal approval by the department or, if the department's approval is not otherwise required, by the director of the state agency. No payments for any consulting services contract shall be made prior to this approval of the award.

For the purpose of this subdivision an "emergency" means an instance, as determined by the department, where the use of contracted services appeared to be reasonably necessary but time did not permit the obtaining of prior formal approval of the contract.

(e) No consulting services contractor shall be awarded a contract totaling five thousand dollars (\$5,000), or more, unless all of the following apply:

(1) The state agency has reviewed any contractor evaluation form on file with the department in accordance with Section 10369.

(2) Each state agency shall require that a completed resume for each contract participant who will exercise a major administrative role or major policy or consultant role, as identified by the contractor, be attached to the contract for public record and is made a part of the contract.

(3) The department shall notify a state agency seeking approval of a proposed contract within 10 working days if it has a negative evaluation in its files on a previous contract or contracts awarded to this contractor.

(f) The department may require special evaluation procedures for multiyear contracts or for contracts calling for special evaluation procedures beyond the post-evaluation.

(g) Any contract for consulting services awarded without competition shall be listed in the California State Contracts Register. The information contained in the listing shall include the contract recipient, amount, and services covered. The requirement of this subdivision shall not apply to any contract awarded without competition executed with an expert witness for purposes of civil litigation in a pending case.

(h) The department shall have the duty to restrict or terminate the authority of a state agency to enter into consultant contracts if the state agency has consistently avoided the proper preparation, retention, or submission of post-evaluation forms, as required by this article.

10381. (a) The department shall ensure that all state agencies are kept fully informed of the department's plans and procedures for implementing the provisions of this article. The department shall make information available on implementation procedures to all interested parties.

(b) The department shall ensure that every consultant services contract contains standard language that fully informs the contractor of his or her duties, obligations, and rights under this article, and any additional contractor rights and obligations which the department determines should be included.

(c) Each consulting services contract shall have a provision for settlement of contract disputes.

ARTICLE 5.5. FEDERAL SURPLUS PERSONAL PROPERTY

10383. The Department of General Services is hereby designated as the agency for the State of California responsible for distribution of federal surplus personal property, excepting food commodities, in accordance with subdivision (j) of Section 203 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. Sec. 484), as amended, and succeeds to and is vested with the duties, purposes, responsibilities, and jurisdiction heretofore exercised by the State Department of Education with respect to the distribution of federal surplus personal property, excepting the duties, purposes, responsibilities, and jurisdiction exercised by the State Department of Education with respect to the distribution of federal surplus food commodities.

10383.1. The department shall cooperate with the federal government and its agencies in securing the expeditious and equitable distribution of surplus personal property of the federal government, excepting food commodities, to eligible institutions in California, assist those institutions in securing that property, and do all things necessary to the execution of its powers and duties as the state agency for the distribution of federal personal surplus property, excepting food commodities, in accordance with subdivision (j) of Section 203 of the Federal Property and Administrative Services Act of 1949, as amended.

10383.2. The department may enter into cooperative agreements with, and may provide for utilization by, federal agencies, with or without payment or reimbursement, of the property, facilities, personnel, and services of the department in carrying out the purposes of this article.

10383.3. The Director of General Services may create a committee to serve as an advisory body to the department to ensure that distribution of federal surplus personal property to eligible recipients will be accomplished fairly and equitably. In the event that such a committee is created, the membership shall be representative of a cross section of those institutions that are eligible recipients, and the members shall serve without compensation but shall be reimbursed for any actual and necessary expenses incurred in connection with the performance of their advisory function.

10383.4. The department shall develop a detailed state plan of operation in accordance with subdivision (j) of Section 203 of the Federal Property and Administrative Services Act of 1949, as amended, and the Governor shall certify and submit the plan to the Administrator of the Federal General Services Administration.

10383.5. The cash resources of the Surplus Property – Hardware Program from surplus-personal property transferred to this state in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. Sec. 484(j)) shall be deposited in the Service Revolving Fund in the State Treasury, created pursuant to Section 16420 of the Government

Code. All costs of the Department of General Services attributable to the distribution of surplus personal property pursuant to this article shall be paid from the Service Revolving Fund.

10383.6. The Department of General Services shall have the possession and control of all records, papers, offices, equipment, supplies, moneys, funds, appropriations, land, and other property real or personal held for the benefit or use of the State Department of Education in the performance of the duties, powers, purposes, responsibilities, and jurisdiction pertaining to surplus personal property, excepting food commodities, that on the operative date of this section are vested in the Department of General Services.

10383.7. All officers and employees of the State Department of Education as mutually agreed by the Department of General Services to be on the operative date of this section serving in the state civil service, other than as temporary employees, and engaged in the performance of the function vested in the Department of General Services by this article shall be transferred to the Department of General Services. The status, position, and rights of such persons shall not be affected by the transfer and shall be retained by them as officers and employees of the Department of General Services pursuant to the State Civil Service Act, except as to positions exempt from civil service.

10383.8. The department may make all rules and regulations consistent with the law for the purpose of carrying into effect the provisions of this article. Those rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

ARTICLE 6.5. STATE SURPLUS PERSONAL PROPERTY

10389.1. The Department of General Services, if feasible and consistent with existing law, shall first offer appropriate state surplus personal property to school districts prior to offering that property to the public, except for property more appropriately suited for public safety uses. The department may offer school districts state surplus personal property at less than fair market value, if it is determined by the Director of General Services to be in the best interests of the state. The department shall develop policies and procedures for the implementation of this article.

ARTICLE 7.6. RECYCLED OIL MARKETS

10405. The following definitions govern the construction of this article:

- (a) "Department" means the State Department of Health Services.
- (b) "Industrial oil" means any compressor, turbine, or bearing oil, hydraulic oil, metal-working oil, or refrigeration oil.
- (c) "Lubricating oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox, or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment, or machinery powered by an internal combustion engine.
- (d) "Procuring agency" means any state agency or any person contracting with that agency with respect to work performed under a contract for lubricating oil or industrial oil.
- (e) "Recycled oil" means recycled oil, as defined in subdivision © of Section 25250.1 of the Health and Safety Code.
- (f) "Used oil" means used oil, as defined in subdivision (a) of Section 25250.1 of the Health and Safety Code.
- (g) "Virgin oil" means oil which has been refined from crude oil and which has not been used or contaminated with impurities.

10406. Every procuring agency shall continuously review and revise its procedures and specifications for the purchase of lubricating oil and industrial oil to eliminate any exclusion of recycled oils and any requirement that oils be manufactured from virgin materials. This section does not prohibit a local agency from purchasing virgin oil products for exclusive use in vehicles whose warranties expressly prohibit the use of products containing recycled oil.

10407. Every procuring agency shall require that purchases of lubricating oil and industrial oil be made from the seller whose oil product contains the greater percentage of recycled oil, unless the procuring agency certifies that a specific oil product containing recycled oil is any of the following:

- (1) Not reasonably available within a reasonable period of time.
- (2) Unable to meet the reasonable performance standards of the procuring agency, including any warranty requirement.
- (3) Available only at a cost greater than the cost of available virgin oil products.

10408. (a) Every procuring agency shall establish and maintain an affirmative program for procuring oils containing the maximum content of recycled oil.

(b) An affirmative program shall include, but not be limited to, all of the following:

- (1) The placement of descriptions of the preference for recycled oil products in publications used to solicit bids from suppliers.
- (2) Description of the recycled oil procurement program at bidders' conferences.
- (3) Discussion of the preference program in lubricating oil and industrial oil procurement solicitations or invitations to bid.
- (4) Efforts to inform industry trade associations about the preference program.

10409. Every local agency, as defined in Section 17518 of the Government Code, shall purchase lubricating oil and industrial oil from the seller whose oil product contains the greater percentage of recycled oil, if the availability, fitness, quality, and price of the recycled oil product is otherwise equal to, or better than, virgin oil products. This section shall not prohibit a local agency from purchasing virgin oil products for exclusive use in vehicles whose warranties expressly prohibit the use of products containing recycled oil.

ARTICLE 8. CONFLICT OF INTEREST

10410. No officer or employee in the state civil service or other appointed state official shall engage in any employment, activity, or enterprise from which the officer or employee receives compensation or in which the officer or employee has a financial interest and which is sponsored or funded, or sponsored and funded, by any state agency or department through or by a state contract unless the employment, activity, or enterprise is required as a condition of the officer's or employee's regular state employment. No officer or employee in the state civil service shall contract on his or her own individual behalf as an independent contractor with any state agency to provide services or goods.

10411. (a) No retired, dismissed, separated, or formerly employed person of any state agency or department employed under the state civil service or otherwise appointed to serve in state government may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency or department. The prohibition of this subdivision shall apply to a person only during the two-year period beginning on the date the person left state employment.

(b) For a period of 12 months following the date of his or her retirement, dismissal, or separation from state service, no person employed under state civil service or otherwise appointed to serve in state government may enter into a contract with any state agency, if he or she was employed by that state agency in a policymaking position in the same general subject area as the proposed contract within the 12-month period prior to his or her retirement, dismissal, or separation. The prohibition of this subdivision shall not apply to a contract requiring the person's services as an expert witness in a civil case or to a contract for the continuation of an attorney's services on a matter he or she was involved with prior to leaving state service.

10412. Each contractor who enters into a state contract with the state for ten thousand dollars (\$10,000) or more, shall be assigned an identification number by the department. Each contractor who has been assigned a number, shall list it on each contract he or she enters into with the state, regardless of the amount of the contract.

In the case of a corporation or firm, the president's assigned number shall be used exclusively on each contract. The assigned number shall remain unchanged regardless of future name changes.

ARTICLE 9. REMEDIES AND PENALTIES

10420. Every contract or other transaction entered in violation of any provision of this chapter is void, unless the violation is technical or nonsubstantive.

10421. The state, or any person acting on behalf of the state, may bring a civil action seeking a determination by the Superior Court that a contract or other transaction has been entered in violation of any provision of this chapter. If the court finds substantial evidence of such a violation, it may issue a temporary injunction to prevent any further dealings upon the contract or other transaction, pending a final determination on the merits of the case. If the action results in a final determination that the contract or other transaction has been entered in violation of this chapter, it shall be void, and the state or person bringing the action shall be awarded costs and attorney's fees. This section shall not be construed to permit an award of costs and attorney fees to the person or entity contracting or otherwise transacting with the state.

10422. Any officer or employee of the department who corruptly performs any official act under this chapter to the injury of the state is guilty of a felony.

10423. Any person contracting with the state by oral or written contract who corruptly permits the violation of any contract made under this chapter is guilty of a felony.

10424. Persons convicted under Section 10422 or 10423 are also liable to the state for double the amount the state may have lost, or be liable to lose by reason of the acts made crimes by this article.

10425. Willful violation of any other provision of this chapter shall constitute a misdemeanor.

10426. (a) It shall be unlawful for a person to intentionally disclose proprietary information obtained in the negotiation, execution, or performance of a consulting services contract, as defined in Section 10335.5, or an information technology contract, as defined in Section 11702 of

the Government Code, with a state agency when the contracting party knew or should have known that the disclosure was likely to cause harm.

(b) A violation of this section shall be punishable as a misdemeanor and may be prosecuted by the Attorney General or by a local district attorney in the district in which the disclosure took place.

(c) (1) For the purposes of this section "proprietary information" shall include any information agreed by the contracting parties to be proprietary or any information that is designated by a contracting state agency to be proprietary. A contracting state agency shall specifically identify in the contract any information that is considered to be proprietary. The state agency shall make this designation only in cases where the state agency has reason to believe that the release of this information poses an immediate threat to the health, safety, or welfare of the public or the state agency has reason to believe that the contracting party intends to sell the information. If the state agency makes a designation of proprietary information subsequent to the execution of the contract, the state agency shall make a good faith effort to amend the contract to incorporate the subsequent designation of proprietary information. A contracting state agency shall provide written notification to a contracting party of any information that, subsequent to the execution of the contract, is identified to be proprietary. A contracting party is not in violation of this section if that party discloses information prior to the receipt of the written notification.

(2) Any information that is required to be released or disclosed by a contracting party pursuant to a legal requirement, including an order of a court or regulatory agency, shall not be considered a violation of this section.

ARTICLE 10. EXEMPTIONS

10430. This chapter does not apply to any of the following:

(a) The Regents of the University of California and the Trustees of the California State University, except that Article 9 (commencing with Section 10420) shall apply to the Trustees of the California State University.

(b) (1) Transactions covered under Chapter 3 (commencing with Section 12100), except that Sections 10365.5, 10410, and 10411 shall apply to all transactions under that chapter.

(2) Notwithstanding paragraph (1), Section 10365.5 shall not apply to incidental advice or suggestions made outside of the scope of a consulting services contract.

(c) Except as otherwise provided in this chapter, any entity exempted from Section 10295. However, the Board of Governors of the California Community Colleges shall be governed by this chapter, except as provided in Sections 10295, 10335, and 10389.

(d) Transactions covered under Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code.

(e) Except as provided for in subdivision (c), members of boards or commissions who receive no payment other than payment for each meeting of the board or commission, payment for preparatory time, and payment for per diem.

(f) The emergency purchase of protective vests for correctional peace officers whose duties require routine contact with state prison inmates. This subdivision shall remain operative only until January 1, 1987.

(g) Spouses of state officers or employees and individuals and entities that employ spouses of state officers and employees, that are vendored to provide services to regional center clients pursuant to Section 4648 of the Welfare and Institutions Code if the vendor of services, in that capacity, does not receive any material financial benefit, distinguishable from the benefit to the public generally, from any governmental decision made by the state officer or employee.

ARTICLE 12. MINORITY BUSINESS PARTICIPATION

10470. As used in this article, the following definitions shall apply:

(a) "Awarding department" means any state agency, department, governmental entity, or other officer of an 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, materials, 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, firm, partnership, corporation, or combination thereof which 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) "Goal" means a numerically expressed objective which awarding departments and contractors are required to make efforts to achieve.

(e) "Minority business enterprise" means a business concern which is all of the following:

(1) At least 51 percent owned by one or more minorities, or in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more minorities.

(2) Managed by, and the daily business operations are controlled by, one or more minorities.

(3) A domestic corporation with its home office located in the United States.

(f) "Women business enterprise" means a business concern which is all of the following:

(1) At least 51 percent owned by a woman or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by one or more women.

(2) Managed by, and the daily business operations are controlled by, one or more women.

(3) A domestic corporation with its home office located in the United States.

10471. Notwithstanding any other provision of law, all contracts awarded pursuant to Section 2910 of the Penal Code or Section 1753.3 of the Welfare and Institutions Code by any state agency, department, officer, or governmental entity for construction, professional services, materials, supplies, equipment, alteration, repair, or improvement shall have statewide participation goals of not less than 15 percent for minority business enterprises, and not less than 5 percent for women business enterprises. These goals are also applicable to the overall dollar amount expended each year by the awarding department designated for those purposes.

10472. In awarding contracts to the lowest responsible bidder, the awarding department shall consider the responsiveness of a bidder to minority business enterprise and women business enterprise goals set forth in Section 10471. If a bidder fails to demonstrate a good faith effort in attaining these goals, the awarding department shall award the contract to the next lowest responsive and responsible bidder.

10473. (a) Each awarding department shall establish a method for monitoring compliance with the minority business enterprise and women business enterprise goals required in this article.

(b) Each awarding department shall adopt rules and regulations for purposes of implementing this article. Emergency regulations consistent with the requirements of this article may be adopted without the review and approval of the Office of Administrative Law if they are adopted within 90 days of the effective date of this article.

(c) In implementing the requirements of 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 federal Small Business Administration.

10474. Commencing on January 1, 1989, and on January 1st of each year thereafter, each awarding department shall submit a report to the Legislature and the Governor on the level of participation by minority or women business enterprises in contracts identified in this article. If the established goals are not being met, the awarding department shall report the reasons for its inability to achieve these goals and shall identify remedial steps to be undertaken.

CHAPTER 3. ACQUISITION OF ELECTRONIC DATA PROCESSING AND TELECOMMUNICATIONS GOODS AND SERVICES

12100. The Legislature finds that the unique aspects of information technology, as defined in Section 11702 of the Government Code, and its importance to state programs warrant a separate acquisition authority. The Legislature further finds that this separate authority should enable the timely acquisition of information technology goods and services in order to meet the state's needs in the most value-effective manner.

All contracts for the acquisition of information technology goods or services, whether by lease or purchase, shall be made by or under the supervision of the Department of General Services.

12100.5. The Regents of the University of California, the Trustees of the California State University, and the Board of Governors of the California Community Colleges shall not be subject to this chapter except that the trustees shall develop policies and procedures maintained in its state university administrative manual and the board shall adopt policies and procedures maintained in its administrative manual that further the legislative policies for contracting expressed in this chapter but without the involvement of the Director of Finance and the Director of General Services or the Department of Finance and the Department of General Services.

12100.6. The Trustees of the California State University are subject to Article 1.5 (commencing with Section 10115) of Chapter 1. The contents of any report that the trustees are required to submit to the Governor and the Legislature pursuant to that article shall be organized so that, whenever applicable, each campus is individually featured.

12100.7. As used in this chapter:

- (a) "Department" means the Department of General Services.
- (b) "Director" means the Director of General Services.
- (c) "Information technology" shall have the same definition as set forth in Section 11702 of the Government Code.
- (d) "Multiple award schedule" (MAS) is an agreement established between the General Services Administration of the United States and certain suppliers to do business under specific prices, terms, and conditions for specified goods, information technology, and services.
- (e) "Multiple award" means a contract of indefinite quantity for one or more similar goods, information technology, or services to more than one supplier.
- (f) "Office" means the office in the department, by whatever name it may be called, which is responsible for contracting for goods and information technology, and is headed by the state procurement officer.
- (g) For purposes of this chapter, "value-effective acquisition" may be defined to include, but not be limited to, the following:
 - (1) The operational cost that the state would incur if the bid or proposal is accepted.
 - (2) Quality of the product or service, or its technical competency.
 - (3) Reliability of delivery and implementation schedules.
 - (4) The maximum facilitation of data exchange and systems integration.
 - (5) Warranties, guarantees, and return policy.
 - (6) Supplier financial stability.
 - (7) Consistency of the proposed solution with the state's planning documents and announced strategic program direction.
 - (8) Quality and effectiveness of business solution and approach.

- (9) Industry and program experience.
- (10) Prior record of supplier performance.
- (11) Supplier expertise with engagements of similar scope and complexity.
- (12) Extent and quality of the proposed participation and acceptance by all user groups.
- (13) Proven development methodologies and tools.
- (14) Innovative use of current technologies and quality results.

12101. It is the intent of the Legislature that policies developed by the Department of Information Technology and procedures developed by the Department of General Services in accordance with Section 12102 provide for:

- (a) The expeditious and value-effective acquisition of information technology goods and services to satisfy state requirements.
- (b) The acquisition of information technology goods and services within a competitive framework.
- (c) The delegation of authority by the Department of General Services to each state agency that has demonstrated to the department's satisfaction the ability to conduct value-effective information technology goods and services acquisitions.
- (d) The exclusion from state bid processes, at the state's option, of any supplier having failed to meet prior contractual requirements related to information technology goods and services.
- (e) The review and resolution of protests submitted by any bidders with respect to any information technology goods and services acquisitions.

12101.2. Commencing on January 1, 1994, the department shall prenegotiate the repetitively used terms and conditions in the state's model contract with each interested vendor who bids or proposes on electronic data processing or telecommunications procurements. The contract language shall be kept on file, as a matter of public record, and shall remain operational until either the state or the vendor provides 30 days' notice to the other party that new negotiations are deemed appropriate.

If, for a particular procurement, the state seeks to make any further changes to either the negotiated or the standard contract language, or both, it shall identify those changes to each bidder or proposer prior to the due date for the bid or proposal. If for a particular procurement, a bidder or proposer seeks to propose a negotiated change or standard contract language change, it shall make this identification within the timeframe identified in the solicitation document.

12101.5. (a) It is the intent of the Legislature that agencies of the State of California use an acquisition method that is compatible with their short- and long-term fiscal needs in contracts relating to commodities and information technology goods and services. State agencies should be able to specify their anticipated life cycle requirements that would become one of the criteria for contractor selection. These agencies should be given the choice of suppliers to meet statewide standardization needs, unique service requirements, application requirements, and long-term satisfaction criteria. There is a need for the State of California to enter into long-term contracts with annual cancellation and fund-out clauses, as required, to protect the state's interests as well as provide the option for multiyear renewals to encourage suppliers to develop higher levels of service and support throughout the contracts.

(b) The state may utilize multiple awards, including federal General Service Administration Multiple Awards Schedules and master agreements or contracts for goods, information technology, services, or consulting services. For purposes of this subdivision, a multiple award is an award of an indefinite quantity contract for one or more similar goods, information technology, or services to more than one supplier. Except for possible multiple awards as permitted by this subdivision, all the requirements of this chapter pertaining to other types of information technology acquisitions shall be followed. The department shall ensure that multiple award schedules are in compliance with all other applicable statutes.

(c) Notwithstanding any other provision of law, state agencies, in exercising their contracting authority delegated by the department, may contract with suppliers who have multiple award schedules with the General Services Administration of the United States on the same terms, conditions, and prices if the supplier is willing to do so. The department may also develop multiple award schedules or agreements for use by state agencies in the same manner. The department shall determine the delegation contracting authority for agencies wishing to use multiple award schedules.

12101.7. (a) Notwithstanding the sealed bidding provisions of this chapter, reverse auctions may be utilized for the acquisition of information technology, in accordance with the procedures set forth in Section 10290.3.

(b) For purposes of this section, "reverse auction" means a competitive online solicitation process for fungible information technology in which vendors compete against each other online in real time in an open and interactive environment.

12102. The Department of Information Technology and the Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of information technology goods and services.

(a) Acquisition of information technology goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state's need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain, in the State Administrative Manual, appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of information technology goods and services. These guidelines may be in the form of standard formats or model formats.

(b) Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for the acquisition of information technology goods and services, including systems integration, shall provide for the selection of a contractor on an objective basis not limited to cost alone.

(1) The Department of General Services shall invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and to make the acquisition process more efficient, including, but not limited to, consideration of comprehensive statements in the request for proposals of the business needs and governmental functions, access to studies, planning documents, feasibility study reports and draft requests for proposals applicable to solicitations, minimizing the time and cost of the proposal submittal and selection process, and development of a procedure for submission and evaluation of a single proposal rather than multiple proposals.

(2) Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed prior to the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published immediately before the opening of cost proposals. The state's contact person for administration of the solicitation shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official contract file, that all cost proposals received by the state have been maintained sealed and under lock and key until the time cost proposals are opened.

(c) The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.

(d) The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

(e) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for information technology goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(f) Acquisition authority may be delegated by the Director of General Services to any state agency which has been determined by the Department of General Services to be capable of effective use of that authority. This authority may be limited by the Department of General Services. Acquisitions conducted under delegated authority shall be reviewed by the Department of General Services on a selective basis.

(g) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

Further, it is the intent of the Legislature that, if a state information technology advisory committee or a state telecommunications advisory committee is established by the Governor, the Director of Information Technology, or the Director of General Services, the policies and procedures developed by the Director of Information Technology and the Director of General Services in accordance with this chapter shall be submitted to that committee, including supplier representatives, for review and comment, and that the comment be considered by both departments prior to the adoption of any policy or procedure. It is also the intent of the Legislature that this section shall apply to the Department of General Services Information Technology Customer Council.

(h) Protest procedures shall be developed to provide bidders an opportunity to protest any formal, competitive acquisition conducted in accordance with this chapter. The procedures shall provide that protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Director of General Services, or a person designated by the director, may consider and decide on initial protests. A decision regarding an initial protest shall be final. If prior to the last day to protest, any bidder who has submitted an offer files a protest with the department against the awarding of the contract on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting bidder shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(i) Information technology goods which have been determined to be surplus to state needs shall be disposed of in a manner that will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(j) A supplier may be excluded from bid processes if the supplier's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures which shall be maintained in the State Administrative Manual. This exclusion may not exceed 360 calendar days for any one determination of unsatisfactory performance. Any supplier excluded in accordance with this section shall be reinstated as a qualified supplier at any time during this 360-day period, upon demonstrating to the department's satisfaction that the problems which resulted in the supplier's exclusion have been corrected.

12103. In addition to the mandatory requirements enumerated in Section 12102, the acquisition policies developed and maintained by the Department of Information Technology and procedures developed and maintained by the Department of General Services in accordance with this chapter may provide for the following:

(a) Price negotiation with respect to contracts entered into in accordance with this chapter.

(b) System or equipment component performance, or availability standards, including an assessment of the added cost to the state to receive contractual guarantee of a level of performance.

(c) Requirement of a bond or assessment of a cost penalty with respect to a contract or consideration of a contract offered by a supplier whose performance has been determined unsatisfactory in accordance with established procedures maintained in the State Administrative Manual as required by Section 12102.

12105. The Department of General Services and the Department of Information Technology shall coordinate in the development of policies and procedures which implement the intent of this chapter. The Department of Information Technology shall have the final authority in the determination of any general policy and the Department of General Services shall have the final authority in the determination of any procedures.

12106. The Department of General Services may, in addition to fulfilling the mandatory requirements enumerated in Section 12102, adopt such rules and regulations as are necessary for the purposes of this chapter.

12108. Until the time that the Department of General Services has published in the State Administrative Manual the procedures required in accordance with Section 12102, acquisitions of information technology goods and services shall be accomplished in accordance with either existing State Administrative Manual procedures for the acquisition of information technology goods and services, or Article 2 (commencing with Section 14790) of Chapter 6 of Part 5.5 of Division 3 of Title 2 of the Government Code, as determined by the Department of General Services.

12109. The Director of General Services may make the services of the department under this chapter available, upon the terms and conditions that may be deemed satisfactory, to any tax-supported public agency in the state, including a school district, for assisting the agency in the acquisition of information technology goods or services.

12112. Any contract for information technology goods or services, to be manufactured or performed by the contractor especially for the state and not suitable for sale to others in the ordinary course of the contractor's business may provide, on the terms and conditions that the department deems necessary to protect the state's interests, for progress payments for work performed and costs incurred at the contractor's shop or plant, provided that not less than 10 percent of the contract price is required to be withheld until final delivery and acceptance of the goods or services, and provided further, that the contractor is required to submit a faithful performance bond, acceptable to the department, in a sum not less than one-half of the total amount payable under the contract securing the faithful performance of the contract by the contractor.

12113. (a) Notwithstanding any other provision of law, state and local agencies may enter into agreements to pay for telecommunications services to be utilized beyond the current fiscal year. "Telecommunications services" for purposes of this section shall include, but not be limited to, central office-based leased communications systems equipped with primary station lines, capable of receiving in-dialed voice and data communications and capable of out-dialing voice and data communications and any customer premised equipment, software and installation costs necessary for utilization by the state or local agency.

(b) State and local agencies may enter into financing agreements for the acquisition of telecommunications services whenever the state or local agency may derive monetary benefit and greater services as a result of its ability to acquire capital at lower interest cost than the supplier of those services can provide directly to the agency or whenever the state or local agency may obtain a reduced cost of service based on length of agreement if offered by the supplier of telecommunications service.

(c) Acquisition requirements for financing of telecommunications goods and services shall be considered to have been met whenever the financing is within the scope of public sector requests for proposals or whenever the financing is offered by a sole source provider or that provider's assignee.

(d) The provisions of this section shall not be construed to alter or circumvent any existing acquisition procedure or requirement, nor to alter or circumvent the acquisition authority of any state or local agency.

12120. The Legislature finds and declares that, with the advent of deregulation in the telecommunications industry, substantial cost savings can be realized by the state through the specialized evaluation and acquisition of alternative telecommunications systems.

All contracts for the acquisition of telecommunications services and all contracts for the acquisition of telecommunications goods, whether by lease or purchase, shall be made by, or under the supervision of, the Department of General Services. All acquisitions shall be accomplished in accordance with Chapter 3 (commencing with Section 12100), relating to the acquisition of information technology goods and services, except to the extent any directive or provision is uniquely applicable to information technology acquisitions. The Department of General Services shall have responsibility for the establishment of policy and procedures for telecommunications. The Department of General Services shall have responsibility for the establishment of tactical policy and procedures for data-processing acquisitions consistent with statewide strategic policy as established by the Department of Finance. The Department of Finance shall have review and approval responsibility of data-processing information and telecommunication acquisitions to assure consistency with budgetary objectives. The Trustees of the California State University and the Board of Governors of the California Community Colleges shall assume the functions of the Department of Finance and the Department of General Services with regard to acquisition of telecommunication goods and services by the California State University and the California Community Colleges, respectively. The trustees and the board shall each grant to the Department of General Services, Division of Telecommunications, an opportunity to bid whenever the university or the college system solicits bids for telecommunications goods and services.

12121. As used in this chapter:

(a) "Tactical policy" means the policies of an organization necessary to direct operational staff in carrying out their day-to-day activities.

(b) "Strategic policy" means policy which defines the goals and objectives for an organization.

CHAPTER 3.6. THE ALTERNATIVE PROTEST PILOT PROJECT

12125. There is hereby established the Alternative Protest Pilot Project to be administered by the Department of General Services.

12126. (a) Notwithstanding any other provision of law, any department or agency may use the solicitation and alternative protest procedures outlined in this chapter for solicitations authorized under Chapter 2 (commencing with Section 10290) or Chapter 3 (commencing with Section 12100). The Department of General Services shall develop procedures and guidelines for the implementation of this pilot project. Establishment of procedures for major information technology

acquisitions pursuant to this chapter shall be coordinated with the Department of Information Technology.

(b) To be eligible for this pilot project, the contracting department shall agree to participate in the pilot project and the Department of General Services shall indicate that the proposed solicitation shall be conducted as part of the pilot project prior to release of the solicitation. Submission of a bid constitutes consent for participation in the alternative protest pilot project. Any protests filed in relation to the proposed contract award shall be conducted under the procedures set forth by the Department of General Services for the alternative protest pilot project.

(c) Notwithstanding any other provision of law to the contrary, any bid protest conducted under this chapter shall include one or more of the following alternative procedures:

(1) The protest process shall not prevent the commencement of work in accordance with the terms of any other contract awarded pursuant to this chapter. A contract may be entered into pending a final decision on the protest.

(2) The Department of General Services shall review the protest within seven days of the filing date to determine if the protest is frivolous. If determined to be frivolous, the protest shall not proceed under this chapter until the bidder posts a protest bond in an amount not less than 10 percent of the estimated contract value, as determined by the Department of General Services in the solicitation.

(3) The Director of General Services shall issue a decision within a period not to exceed 45 days from the date the protest is filed.

(4) Arbitration, as defined and established by the Department of General Services, shall be the resolution tool.

(d) Authority to protest under this chapter shall be limited to participating bidders.

(1) Grounds for major information technology acquisition protests shall be limited to violations of the solicitation procedures and that the protestant should have been selected.

(2) Any other acquisition protest filed pursuant to this chapter shall be based on the ground that the bid or proposal should have been selected in accordance with selection criteria in the solicitation document.

12127. Major information technology acquisitions subject to this chapter shall meet the following criteria:

(a) The agency or department has stated its business needs and not detailed specification in the solicitation.

(b) The agency or department has stated the criteria and the weight to be given to each criterion by which it will evaluate all proposals.

(c) The contract shall be awarded based on "value effective acquisition," as that term is defined in Section 12100.7, competitive negotiation, an alternative procurement, or performance-based solicitations.

12127.5 All other procurements subject to this chapter shall meet one or more of the following criteria:

(a) The agency or department has stated its business needs and not detailed specification in the solicitation.

(b) The agency or department has stated the criteria and the weight to be given to each criterion by which it will evaluate all proposals.

(c) The contract shall be awarded based on "value effective acquisition," as that term is defined in Section 12100.7, competitive negotiation, an alternative procurement, performance-based solicitations, or other methodologies as established by the Department of General Services.

12128. The pilot project shall continue until it has been applied to at least 25 contracts, with varying dollar amounts, at least five of which are major information technology acquisitions, or

until December 31, 2005, whichever occurs later. The Department of General Services shall apply this chapter to the following categories:

- (a) Information technology and ancillary services.
- (b) Material, supplies, equipment, and ancillary services.

12129. The Department of General Services shall electronically submit a report to the Legislature regarding the pilot project within 90 days after the termination of the project. The report shall include the following:

(a) The percentage of bids with values under five hundred thousand dollars (\$500,000), under one million dollars (\$1,000,000), and over one million dollars (\$1,000,000) or more not in the pilot project that were protested with corresponding data for solicitations issued pursuant to the pilot project.

(b) The number of protests determined to be frivolous by the Department of General Services, subject to this chapter, with corresponding data for solicitations issued pursuant to existing procedures.

(c) The percentage of contracts awarded under the pilot project that were subsequently challenged in a court of law with corresponding data for solicitations issued pursuant to existing procedures.

(d) All costs of a protest incurred by state agencies subject to subdivision (b) of Section 12126 from the original date filed, until final resolution. This shall include all costs associated with a successful protest and commencement of work under subdivision (b) of Section 12126 from the original date filed, until final resolution, with corresponding data for solicitations issued pursuant to existing procedures.

(e) The length of time to resolve protests pursuant to this chapter and the corresponding data for solicitations issued pursuant to existing procedures.

12130. The pilot project shall be considered a success if there is at least a 10-percent reduction in the number of frivolous protests filed with the Department of General Services and if the length of time for the state to resolve protests is reduced by at least 20 percent, or if there is a substantial reduction in the number of protests filed under the pilot project than under the existing protest procedures.

CHAPTER 4. STATE ASSISTANCE FOR RECYCLING MARKETS ARTICLE 1. GENERAL PROVISIONS

12150. This chapter shall be known and may be cited as the State Assistance for Recycling (STAR) Markets Act of 1989.

12153. The Legislature finds and declares all of the following:

(a) It is the policy of the state to conserve and protect resources for future citizens as well as the current population of the state.

(b) It is in the best interest of the people of the state that the state alter its perception of solid waste to instead look upon this waste as resources that can be recovered and reused.

(c) It is in the best interest of reducing the increasing burden on communities disposing of the state's solid waste for the state to take a role in developing an integrated state solid waste management policy, which includes source reduction, recycling, composting, market development, incineration, and landfills. Since recycling is a necessary component of this policy, the state shall encourage the use of recycled products to ensure that the state's industries have sufficient and adequate markets for products regeneratively utilizing the state's solid waste as recycled resources.

(d) It is the policy of the state to encourage the expansion of businesses located in California and, to whatever extent possible, to look favorably on California businesses in the recycling

industry, which include, but are not limited to, those California businesses that manufacture, distribute, or act as brokers for, recycled products.

(e) Market development is the key to moving beyond the uneven collection of recyclable materials to stable resource recovery and reuse. Because of existing local collection programs, significant quantities of recycled resources such as the following are today available for purchase: fine grades of paper, high-quality paper products, plastics, retreaded automobile tires, rerefined lubricating oil, reused automotive parts, reclaimed solvents, recycled asphalt, recycled concrete, carpet or geotextiles composed of recycled plastics, compost and co-compost products, and steel products.

(f) In making these findings, the Legislature declares that the policy and intent of this chapter is to set an example for the state and nation to encourage the purchase of products utilizing recycled resources.

(g) It is the intent of the Legislature, whenever economically feasible and as markets allow, to continually expand the policies of the state to utilize recycled resources in the daily operations of the state. This includes, but is not limited to, the procurement and purchase of recycled materials, the use of recycled resources in the performance of a service or project for the state, and the purchase of equipment used for the collection and sale of waste materials generated by the state.

(h) It is the intent of the Legislature that the Department of General Services work with all state departments, agencies, the Legislature, the California Integrated Waste Management Board, and the Department of Conservation to draft, establish, and implement policies that ensure the procurement and use of recycled resources.

(i) It is also the intent of the Legislature to encourage local public agencies and private companies to adopt policies to maximize the use of recycled resources.

12155. As used in this chapter, the following definitions shall apply:

(a) "Department" means the Department of General Services.

(b) "Director" means the Director of General Services.

(c) "Procuring agency" means the Department of General Services and any other state department or agency having delegated procurement authority granted pursuant to Section 10333 with an annual total dollar limit above one million dollars (\$1,000,000) as prescribed by the Office of Procurement within the Department of General Services.

(d) "Board" means the California Integrated Waste Management Board, as defined pursuant to Section 40110 of the Public Resources Code.

12156. (a) Except as provided in subdivision (b), no state agency shall purchase any printer or duplication cartridge for which the manufacturer, wholesaler, distributor, retailer, or remanufacturer places restrictions on the recycling or remanufacturing of that cartridge by any other person. For purposes of this section, these restrictions include, but are not limited to, all of the following:

(1) Reducing the price of the cartridge in exchange for any agreement not to remanufacture the cartridge.

(2) A licensing agreement on the cartridge that forbids remanufacturing.

(3) Any contract that forbids the remanufacturing or recycling of the cartridge.

(b) Notwithstanding subdivision (a), a manufacturer, wholesaler, distributor, retailer, or remanufacturer who establishes a recycling or remanufacturing program that is available to its customers may enter into signed agreements with those customers consenting to the return of the used cartridge to the manufacturer, wholesaler, distributor, retailer, or remanufacturer, only for either of the following purposes:

(1) Recycling and remanufacturing, for purposes of making the remanufactured cartridge available for purchase.

(2) Recycling.

(c) Each state agency shall print a statement on the cover of its printer or duplicator cartridge bid packages, or in some other noticeable place in the bid packet, notifying all bidders that it is

unlawful to prohibit a printer or duplication cartridge that is sold to the state from being recycled or remanufactured, except as specified in subdivision (b).

(d) This section does not authorize any violation of the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code) or the Unfair Practices Act (Chapter 4 (commencing with Section 17000) of Part 2 of Division 7 of the Business and Professions Code).

(e) As used in this section, the following terms mean:

(1) "Printer or duplication cartridge" means a cartridge, including, but not limited to, a toner or ink cartridge, used in printer or duplication equipment for business or personal use.

(2) "Recycled" means a printer or duplication cartridge that would otherwise become solid waste, but which has undergone a process of collecting, sorting, cleansing, treating, or reconstituting, and which has been returned for the manufacture of new products or the remanufacture of used cartridges.

(3) "Remanufactured" means a printer or duplication cartridge that has served its intended end use, but, rather than being discarded or disposed of, has instead been restored, renovated, repaired, or recharged, without substantial alteration of its form.

12157. This chapter applies to the procurement and purchase of the following materials, goods, and supplies, or products containing the following recycled resources and meeting the specified recycled content requirements pursuant to Section 12161, 12181, 12182, or 12200, whichever is applicable:

(a) Recycled paper products, which include, but are not limited to, fine grades of paper, corrugated boxes, newsprint, tissue, and toweling.

(b) Compost and co-compost products.

(c) Glass.

(d) Oil.

(e) Plastic.

(f) Solvents and paint, including water-based paint.

(g) Tires.

(h) Steel.

12158. This chapter does not apply to the procurement and purchase of asphalt concrete and portland cement concrete pavement.

12159. (a) If a recycled product, as defined in subdivision (a) of Section 12200, costs more than the same product made with virgin material, the state agency shall, if feasible, purchase fewer of those more costly products or apply the cost savings, if any, gained from buying other recycled products towards the purchase of those more costly products to meet the solid waste diversion goals of Section 41780.

(b) All state agencies shall, if feasible, establish purchasing practices which ensure the purchase of materials, goods, and supplies that may be recycled or reused. Each state agency shall initiate activities for the collection, separation, and recycling of recyclable materials and may appoint a recycling coordinator to assist in implementing this section.

ARTICLE 2. RECYCLED PAPER PRODUCTS

12160. The Legislature finds and declares that it is the policy of the state to conserve and protect its resources. The maintenance of a quality environment for the people of this state now and in the future is a matter of statewide concern.

The Legislature further finds and declares that the volume of solid waste generated within the state coupled with an increased rate in the consumption of paper products and the absence of

adequate programs and procedures for the reuse of these materials threaten the quality of the environment and well-being of the people of California.

In making these findings, the Legislature declares that the policy and intent of this article is to improve environmental quality by the recycling of paper products.

12161. For the purpose of this article, "recycled paper product" means all paper and woodpulp products containing postconsumer and secondary materials, as defined in this section.

"Postconsumer material" means a finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. "Secondary material" means fragments of finished products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer material, but does not include fibrous waste generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper machine rolls (mill broke), wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

"Recycled paper product" means a paper product with not less than 50 percent, by fiber weight, consisting of secondary and postconsumer material with not less than 10 percent of fiber weight consisting of postconsumer material.

For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, and for other uncoated printing and writing papers, such as writing and office paper, book paper, cotton fiber paper containing 25 to 75 percent cotton fiber, and cover stock, the minimum content standard shall be no less than 20 percent of fiber weight of postconsumer materials beginning December 31, 1994. The minimum content standard shall be increased to 30 percent of fiber weight of postconsumer materials beginning on December 31, 1998.

12162. (a) At least 50 percent of the total dollar amount of paper products purchased or procured shall be a recycled paper product, as defined in Section 12161. In addition, at least 25 percent of the total fine writing and printing paper purchased or procured shall be a recycled paper product, as defined in Section 12161.

(b) All state agencies shall report to the department and to the board on their progress in meeting the requirements of subdivision (a) and Section 12205. The department shall develop a uniform reporting procedure which state agencies shall follow. If at any time a requirement has not been met, the department, in consultation with the board, shall review procurement policies and shall make recommendations for immediate revisions to ensure that the requirement is met. The department, in consultation with the board, shall present its recommendations on these procurement policies to the Legislature in the department's annual report pursuant to Section 12225.

(c) (1) All state agencies shall give a price preference, not to exceed 10 percent, to recycled paper products, if the product's fitness, quality, and availability are comparable to nonrecycled products. The board, in consultation with the department, shall establish, on or before May 1, 1994, and every two years thereafter, price preferences for the purposes of meeting the goals set forth in this section and Section 12205 for recycled products. For those priority commodities, as defined by the board, the price preference established by the board shall not be less than 5 percent. The board shall publish the established price preferences annually in the board's report to the Legislature pursuant to Section 40507 of the Public Resources Code.

(2) In establishing the price preferences, the board shall take into consideration all of the following factors:

- (A) Materials that comprise the largest percentage of the state's solid waste stream.
- (B) Materials that have the highest percentage of postconsumer material.
- (C) Materials that require expanded markets.
- (D) Any other market factors as determined by the board.

(3) The combined dollar amount of preference granted pursuant to this section and any other provision of law shall not exceed one hundred thousand dollars (\$100,000).

(d) Notwithstanding paragraph (1) of subdivision (c), the recycled paper bidder preference shall not exceed fifty thousand dollars (\$50,000) if a preference exceeding that amount would preclude an award to a small business that offers nonrecycled paper products and is qualified in accordance with Section 14838 of the Government Code.

12162.5. All state agencies may, at the discretion of the individual agency director, print a symbol on paper products selected by the agency director. This symbol shall be determined by the department, in consultation with the board, and shall be similar to the following: "Printed on Recycled Paper." This symbol shall be printed only on paper products meeting the definition of recycled paper products in Section 12161.

12163. (a) The director, in consultation with the board, shall review the procurement specifications currently used by the department in order to eliminate, wherever economically feasible, discrimination against the procurement of recycled paper products.

(b) The director, in consultation with the board, shall review the recycled paper product specifications at least annually to consider increasing the percentage of recycled paper product in paper and woodpulp product purchases. The director shall include his or her conclusions and recommendations in the department's annual report pursuant to Section 12225.

(c) When contracting with the department for the sale of material subject to this article, the contractor shall certify in writing to the contracting officer or his or her representative that the material offered contains the minimum percentage of recycled paper required by Section 12161 and shall specify the minimum, if not exact, percentage of secondary and postconsumer material in the paper products. The certification shall be furnished under penalty of perjury.

(d) The department, in consultation with the board, shall establish purchasing practices which, to the maximum extent economically feasible, assure purchase of materials which may be recycled or reused when discarded.

(e) The department shall make every effort to eliminate purchases of paper products deemed potential contaminants to the state's recycling program pursuant to Section 12165.

12164. The department shall require the persons with whom it contracts to use, to the maximum extent economically feasible in the performance of the contract work, recycled paper products.

12164.5. (a) It is the intent of the Legislature that for the current state waste paper collection program, the California Integrated Waste Management Board shall provide participating locations with public information awareness and training to state and legislative employees. Additionally, the California Integrated Waste Management Board shall provide training for personnel, including but not limited to, state and buildings and grounds personnel, responsible for the collection of waste materials. This training shall include, but is not limited to, educating and training the personnel concerning the separation and collection of recyclable materials.

(b) It is also the intent of the Legislature that the California Integrated Waste Management Board continue the current state waste paper collection program and use this program as a model to develop a plan for other waste materials generated by state and legislative employees.

(c) It is also the intent of the Legislature that the department, in consultation with the California Integrated Waste Management Board, shall submit a new recycling plan, which includes but is not limited to, the collection and sale of waste materials generated by state and legislative employees. This plan shall be submitted to the appropriate legislative policy committees on or before August 31, 1990. The plan may be phased in utilizing those office facilities and collecting those waste materials most conducive to operation of a source separation program, but shall be fully implemented by June 1, 1991.

12165. (a) After implementing a recycling plan pursuant to subdivision (c) of Section 12164.5, the California Integrated Waste Management Board shall establish, implement, and maintain a recycling plan for the Legislature, which may include all legislative offices and individual members' district offices; all state offices whether in state-owned buildings or leased facilities in Sacramento, Los Angeles, and San Francisco Counties; and in any other areas that the board determines to be feasible. The plan shall include the provisions for the recycling of office paper, corrugated cardboard, newsprint, beverage containers (as defined in Section 14503 of the Public Resources Code), waste oil, and any other material at the discretion of the board.

(b) The collection program for each product and each location shall be reevaluated by the board on or before January 1, 1994. Subsequently, the board, upon the determination that inclusion of any particular material type would result in a net revenue loss to the state, shall have the discretion to exclude that material from the program, and shall report its conclusions and recommendations to the Legislature. In determining the net revenue loss for the collection of a specified waste material, the board shall include the avoided cost to dispose of the waste material. The plan shall provide either for the collection and sale of materials to private brokers, recycling plants, or nonprofit organizations, or the operation of these entities by the state, or a combination thereof. The plan shall be implemented at the earliest possible date.

(c) The board shall provide participating locations with public awareness information and training to state and legislative employees, including, but not limited to, the proper separation and disposal of recyclable resources. Additionally, the board shall provide training for personnel, including, but not limited to, state buildings and grounds personnel, responsible for the collection of waste materials. This training shall include, but is not limited to, educating and training the personnel concerning the separation and collection of recyclable materials.

(d) No individual, group of individuals, state office, agency, or its employees shall establish a similar collection program or enter into agreement for a similar program unless approved by the board.

12166. The California Integrated Waste Management Board may contract as necessary for the recycling of products which have been returned pursuant to Section 12165.

12167. Revenues received from this plan or any other activity involving the collection and sale of recyclable materials in state and legislative offices located in state-owned and state-leased buildings, such as the sale of waste materials through recycling programs operated by the California Integrated Waste Management Board or in agreement with the board, shall be deposited in the Integrated Waste Management Account in the Integrated Waste Management Fund and are hereby continuously appropriated to the board, without regard to fiscal years, until June 30, 1994, for the purposes of offsetting recycling program costs. On and after July 1, 1994, the funds in the Integrated Waste Management Account may be expended by the board, only upon appropriation by the legislature, for the purpose of offsetting recycling program costs.

12167.1. Notwithstanding Section 12167, upon approval by the California Integrated Waste Management Board, revenues derived from the sale of recyclable materials by state agencies and institutions that do not exceed two thousand dollars (\$2,000) annually are hereby continuously appropriated, without regard to fiscal years, for expenditure by those state agencies and institutions for the purposes of offsetting recycling program costs. Revenues that exceed two thousand dollars (\$2,000) annually shall be available for expenditure by those state agencies and institutions when appropriated by the Legislature. Information on the quantities of recyclable materials collected for recycling shall be provided to the board on an annual basis according to a schedule determined by the board and participating agencies.

12168. (a) Fitness and quality being equal, all local and state public agencies shall purchase recycled paper products instead of nonrecycled paper products whenever available at no more than the total cost of nonrecycled paper products. All local public agencies may give preference

to the suppliers of recycled paper products. All local public agencies may define the amount of this preference.

In bids in which the state has reserved the right to make multiple awards, the recycled paper preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of firms offering recycled paper in the contract award.

(b) The combined dollar amount of preferences granted pursuant to this section and any other provisions of law shall not exceed one hundred thousand dollars (\$100,000).

(c) Notwithstanding subdivision (a), and subdivision (b) of Section 12162, the recycled paper bidder preference shall not exceed fifty thousand dollars (\$50,000) if a preference exceeding that amount would preclude an award to a small business that offers nonrecycled paper products and is qualified in accordance with Section 14838 of the Government Code. This provision shall apply only when the small business is the lowest responsible bidder or is eligible for contract award on the basis of application of the 5-percent business preference.

12169. All local public agencies shall require the bidder to specify the minimum, if not exact, percentage of recycled paper product in the paper products, and both the postconsumer and secondary waste content regardless of whether the paper product meets the percentage of recycled paper product required pursuant to Section 12161. The contractor may certify zero recycled product. All contract provisions impeding the consideration of products with reclaimed paper content shall be deleted in favor of performance standards.

All printing contracts made by any local agency shall provide that the paper used shall meet the requirements of these provisions. Except as otherwise provided in this article, state agencies shall also be subject to this section.

ARTICLE 2.1. RECYCLED FLUIDS, PAINTS, AND SOLVENTS

12170. (a) Fitness and quality being equal, all state agencies shall purchase the following recycled products, instead of nonrecycled products, whenever the recycled products are available at the same cost, or at a lower cost, than the total costs of the nonrecycled products:

(1) Rerefined automotive lubricants, including, but not limited to, rerefined motor oil, crankcase oil, engine oil, transmission fluid, and power steering fluid, for all state vehicles, including, but not limited to, all fleet cars, trucks, and buses.

(2) Recycled antifreeze fluid.

(3) Recycled solvent.

(4) Recycled paint.

(b) For the purposes of this section, the following definitions shall apply:

(1) "Available" means providing comparable delivery services and packaging specifications as the agency requires from all suppliers of that product. The agency shall not establish specifications that unnecessarily prevent the use of recycled products.

(2) "Fitness and quality" means all specifications required of the product for its specific use, including those required of a manufacturer's warranty, are met. Procuring agencies may set special standards for motor oil used in engines that operate under extreme conditions, including law enforcement vehicles that run at excessive speeds or for long periods of operation.

(3) "Recycled antifreeze fluid" and "recycled solvents" means having a recycled content of at least 70 percent recycled materials.

(4) (A) "Recycled paint" means having a recycled content consisting of at least 50 percent postconsumer paint. Preconsumer or secondary paint does not qualify as "recycled paint" pursuant to this subparagraph.

(B) If paint containing 50 percent postconsumer content is unavailable, a state agency may substitute paint with the maximum amount of postconsumer content, but not less than 10 percent postconsumer content.

(5) "Rerefined motor oil" means having a base oil content consisting of at least 70 percent rerefined oil.

ARTICLE 3. COMPOST AND CO-COMPOST PRODUCTS

12180. The Legislature hereby finds and declares that it is the policy of the state to encourage the use of marketable end products which are produced as a result of superior waste management by counties, cities, and local agencies. The Legislature further finds and declares that it is in the public interest to provide special consideration for the state purchase of co-compost and compost products because these products substantially reduce the need for solid waste disposal facilities, such as landfills, and will assist the state in providing new alternatives for the alarming decrease in available solid waste disposal facilities, such as landfills.

12181. For purposes of this article, "co-compost product" means an end product which meets all of the following requirements:

(a) It is derived from a blending of materials, of which at least 80 percent, whenever possible, is household refuse and the remainder is sewage sludge or other comparable substitutes, including, but not limited to, nontoxic dairy wastes, livestock and horse manure, or fish wastes.

(b) It is usable.

(c) It is produced by the waste management facilities of counties, cities, or local agencies, or of private entities.

12182. For purposes of this article, "compost product" means an end product which meets all of the following requirements:

(a) It is derived from the controlled biological decomposition of a blend of organic wastes, including, but not limited to, wood byproducts, plant waste, including, but not limited to, rice straw, yard refuse, and sewage sludge.

(b) It is usable.

(c) It is produced by the waste management facilities of counties, cities, or local agencies, or of private entities.

12183. (a) All state departments and agencies, including, but not limited to, the Department of Transportation, the Department of Water Resources, the Department of Forestry, and the Department of Parks and Recreation, shall give purchase preference to compost and co-compost products when they can be substituted for, and cost no more than, the cost of regular fertilizer or soil amendment products, or both, if the co-compost products meet all applicable state standards and regulations, as determined by appropriate testing. The product preference shall include, but not be limited to, the construction of noise attenuation barriers and safety walls, highway planting projects, and recultivation and erosion control programs.

12184. It is the intent of the Legislature, in enacting this article, that the revenues derived from the state purchase of co-compost products will be used by counties, cities, and local agencies to offset the costs of construction, operation, and maintenance of co-compost waste disposal facilities.

12185. All state departments and agencies procuring compost and co-compost products in procurement, service, or construction contracts shall report to the department their purchasing activities, including, but not limited to, total contracting dollars, volume, and number of contracts. The department shall design an appropriate and uniform reporting mechanism which shall be made available to all state agencies.

ARTICLE 4. RECYCLED MATERIALS, GOODS, AND SUPPLIES

12200. For the purpose of this article:

(a) (1) Except as provided in paragraph (2), "recycled product" means all materials, goods, and supplies, no less than 50 percent of the total weight of which consists of secondary and postconsumer material with not less than 10 percent of its total weight consisting of postconsumer material. A recycled product shall include any product that could have been disposed of as solid waste having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of its form.

(2) "Recycled product" also means other flat rolled steel products no less than 25 percent of the total weight of which consists of secondary and postconsumer material, with not less than 10 percent of total weight consisting of postconsumer material. Products made with flat rolled steel meeting these content percentages include, but are not limited to, automobiles, cans, appliances, and office furniture and supplies.

(b) "Postconsumer material" means a finished material that would have been disposed of as a solid waste, having completed its life cycle as a consumer item, and does not include manufacturing wastes.

(c) "Secondary material" means fragments of finished products or finished products of a manufacturing process that has converted a resource into a commodity of real economic value, and includes postconsumer material, but does not include excess virgin resources of the manufacturing process.

12205. (a) All state agencies shall require all contractors to certify in writing the minimum percentage, if not the exact percentage, of postconsumer and secondary material in the materials, goods, or services provided or used. This certification shall be furnished under penalty of perjury.

(b) The department, in consultation with the board, shall review and revise the procurement specifications used by state agencies in order to eliminate restrictive specifications and discrimination against the procurement or purchase of recycled products. Fitness and quality being equal, all state agencies shall purchase recycled products instead of nonrecycled products whenever recycled products are available at the same total cost as nonrecycled products. All state agencies shall allow a price preference, as determined by the board pursuant to Section 12162. In determining procurement specifications, with the exception of any specifications that have been established to preserve the public health and safety, all state procurement and purchasing specifications shall be established in a manner that results in the maximum state procurement and purchase of recycled products.

(c) (1) To assist the state in meeting the requirements of subdivision (a) of Section 12162 and subdivision (e) of this section, the department, in consultation with the board, may also establish recycled-content disclosure, recycled product-only bids, cooperative purchasing arrangements, or conduct an analysis of solid waste diversion from disposal facilities, to meet the requirements for recycled products and to encourage the maximum state procurement and purchase of recycled products. All state agencies shall, if feasible, implement recycled product-only bids for recycled products as defined in subdivision (a) of Section 12200, in order to meet the requirements for recycled products set forth in this section and Section 12162.

(2) This subdivision applies to the procurement or purchase of the following materials, goods, and supplies, or products containing the following recycled resources:

(A) Paper products, that include, but are not limited to, fine papers, such as xerographic and envelope papers and form bond, corrugated boxes, newsprint, tissue, and toweling.

(B) Compost and cocompost products.

(C) Glass.

(D) Oil.

(E) Plastic.

(F) Solvents and paint, including water-based paint.

- (G) Tires.
- (H) Steel.
- (I) Antifreeze.

(d) All state agencies shall, if feasible, establish purchasing practices that ensure the purchase of materials, goods, and supplies that may be recycled or reused when discarded.

(e) The department shall set the following requirements for purchases made by state agencies:

(1) By January 1, 1996, at least 20 percent of state purchases are of recycled products.

(2) By January 1, 1998, at least 30 percent of state purchases are of recycled products.

(3) On and after January 1, 2000, at least 50 percent of state purchases are of recycled products.

(4) The requirements specified in this subdivision shall be applied to the purchases of state agencies for products listed in this section, except in subparagraph (A) of paragraph (2) of subdivision (c) for which requirements are specified in Section 12162.

(f) The purchases of the state agencies shall meet each requirement for, and be applied to the total dollar amount of, each specified product category as defined in this section. The purchase of a recycled-content product from one category may not be applied toward the requirements for, or the total dollar amount of, any other category listed in this section or Section 12157, 12162, 12301, or 12305.

12210. Fitness and quality being equal, all local and state public agencies shall purchase recycled products instead of nonrecycled products whenever available at no more than the total cost of nonrecycled products. All local public agencies may give preference to the suppliers of recycled products. All local public agencies may determine the amount of this preference.

12213. All local public agencies shall require the bidder to specify the minimum, if not exact, percentage of recycled product in the products offered, both the postconsumer and secondary waste content regardless of whether the product meets the percentage of recycled product required pursuant to subdivision (a) of Section 12200. All contract provisions impeding the consideration of products with recycled product shall be deleted in favor of performance standards.

Except as otherwise provided in this article, state agencies are also subject to this section.

12225. On or before August 31, 1991, and every year thereafter, the department, in consultation with the board, shall prepare a report to the Legislature describing the purchase and procurement of products purchased by the state before and after January 1, 1990. The report shall estimate the amount of recycled products utilized by state contractors before and after the enactment of this chapter.

The report shall include, but not be limited to, the following:

(a) Listed by department, the total dollar amounts, volume, and number of contracts of individual products purchased by the department and any other agency having delegated procurement authority pursuant to Section 10333.

(b) Total dollar amounts, volume, and number of contracts of each product purchased by the state, which includes the Legislature, the California State University, and the University of California systems.

(c) A list of individual recycled products purchased pursuant to Sections 10507.5 and 10860, inclusive, this chapter and Chapter 5 (commencing with Section 12300).

(d) The total dollar amounts, volume, and number of contracts of individual products, whether recycled or nonrecycled, purchased by the state.

(e) The total dollar amounts, volume, and number of contracts of recycled products including recycled paper and compost products purchased pursuant to Sections 10507.5 and 10860, inclusive, this chapter, and Chapter 5 (commencing with Section 12300).

(f) The total dollar amount and volume of compost and cocompost products utilized by the state pursuant to Section 12183 or any other state or local program.

(g) For recycled paper products purchased by procuring agencies, the total number of contracts, dollar amounts, and volume of those contracts that were eligible for the preference pursuant to Section 12162.

(h) For each recycled product, including recycled paper and compost products, the total dollar amounts, volume, and number of contracts that were eligible for a preference or a combination thereof pursuant to Sections 4533, 7084, and 14838 of the Government Code.

(i) Total number of bids for each product listed in Section 12157, whether or not a contract was awarded the bid.

(j) The range of dollar amounts for bids on procurement contracts which include, but is not limited to, contracts for the procurement of individual recycled products listed in Section 12157.

(k) For each waste material, total revenue dollars and volume generated from the state waste materials collection program pursuant to Section 12165.

(l) Recommendations to the Legislature as to revisions of the percentage amounts contained in the secondary material and postconsumer material definitions for individual products that will result in greater procurement of recycled products composed of recycled resources that would otherwise be disposed of as solid waste in the state's disposal facilities.

(m) Recommendations on specific products available containing secondary and postconsumer material that are procured by the state, used in the performance of a service or project for the state, and used in state construction contracts.

These products shall be recommended as candidates for the application of the recycled paper product preference described in Section 12162.

(n) A list of products purchased in either large volumes or high dollar amounts by the state that are available as a recycled product, as identified by the board in consultation with the department. The board shall revise this list as products purchased by the state become feasibly available in recycled form. Any revised list shall be included in the annual report required by this section.

12226. (a) It is the intent of the Legislature that the state pursue all feasible measures to improve markets for recycled products including, but not limited to, procurement preferences for purchases made by the state.

(b) Not later than March 1, 1990, the board shall submit to the Legislature a report concerning the state's role in market development for recycling. The report shall address the need for and effectiveness of procurement preferences for the state purchase of recycled goods and materials. The report shall include, but not be limited to, an analysis of the role procurement preferences can play in encouraging recycling and expanding the markets for recycled goods and materials.

CHAPTER 5. RECYCLED PRODUCT PROCUREMENT BY THE LEGISLATURE

ARTICLE 1. GENERAL PROVISIONS

12300. Unless otherwise provided, this chapter shall apply to all purchases made on behalf of the Legislature, whether made by the Senate Committee on Rules, the Assembly Committee on Rules, the Joint Rules Committee, or any other agency of the Legislature.

12301. The following definitions govern the interpretation of this chapter:

(a) "Department" means the Department of General Services.

(b) "Board" means the California Integrated Waste Management Board, as defined pursuant to Section 40110 of the Public Resources Code.

(c) "Recycled paper product" means all paper and woodpulp products containing postconsumer and secondary materials. "Postconsumer material" means a finished material that would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. "Secondary material" means fragments of finished products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer material, but does not include fibrous waste generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper

machine rolls (mill broke), wood slabs, chips, sawdust, or other wood residue from a manufacturing process. "Recycled paper product" means a paper product with not less than 50 percent, by fiber weight, consisting of secondary and postconsumer material with not less than 10 percent of fiber weight consisting of postconsumer material.

For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, and for other uncoated printing and writing papers, such as writing and office paper, book paper, cotton fiber paper containing 25 to 75 percent cotton fiber, and cover stock, the minimum content standard shall be no less than 20 percent of fiber weight of postconsumer materials beginning December 31, 1994. The minimum content standard shall be increased to 30 percent of fiber weight of postconsumer materials beginning on December 31, 1998.

(d) (1) Except as provided in paragraph (2), "recycled product" means all materials, goods, and supplies, excluding paper products, no less than 50 percent of the total weight of which consists of secondary and postconsumer material with not less than 10 percent of its total weight consisting of postconsumer material. A recycled product shall include any product that could have been disposed of as solid waste having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of its form. "Postconsumer material" means a finished material that would have been disposed of as a solid waste, having completed its life cycle as a consumer item, and does not include manufacturing wastes. "Secondary material" means fragments of finished products or finished products of a manufacturing process, which has converted a resource into a commodity of real economic value, and includes postconsumer material, but does not include excess virgin resources of the manufacturing process.

(2) "Recycled product" also means other flat rolled steel products no less than 25 percent of the total weight of which consists of secondary and postconsumer material, with not less than 10 percent of total weight consisting of postconsumer material. Products made with flat rolled steel meeting these content percentages include, but are not limited to, automobiles, cans, appliances, and office furniture and supplies.

12305. This chapter applies to the procurement and purchase of the following materials, goods, and supplies, or products containing the following recycled resources, and meeting the specified content requirements pursuant to either subdivision (c) or (d) of Section 12301, whichever is applicable:

(a) Paper products, that include, but are not limited to, fine grades of paper, corrugated boxes, newsprint, tissue, and toweling.

(b) Glass.

(c) Oil.

(d) Plastic.

(e) Solvents and paint, including water-based paint.

(f) Tires.

(g) Steel.

(h) Antifreeze.

12305.5. If a recycled product costs more than the same product made with virgin material, the Legislature shall purchase fewer of those more costly products or apply cost savings, if any, gained from buying other recycled products towards the purchase of those more costly products.

12306. This chapter does not apply to the procurement and purchase of asphalt concrete and portland cement concrete pavement.

ARTICLE 2. RECYCLED PAPER PRODUCTS

12310. (a) On and after January 1, 1997, at least 50 percent of the total dollar amount of paper products purchased or procured by the Legislature shall be purchased as a recycled paper product, as defined in Section 12301. In addition, at least 25 percent of the total fine writing and printing paper purchased by the Legislature shall be recycled paper products, as defined in Section 12301.

If at any time the requirement for recycled products has not been met, the Legislature and the department, in consultation with the board, shall review the procurement policies of the Legislature and shall make recommendations for immediate revisions to ensure that each requirement is met. Revisions include, but are not limited to, raising the purchasing preference and altering the requirements for each or all recycled products. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature in the department's biennial report pursuant to Section 12225.

(b) When contracting with the Legislature for the sale of recycled paper products, the contractor shall certify in writing to the contracting officer or his or her representative, that the recycled paper products offered contain the minimum percentage of waste materials required by subdivision (c) of Section 12301. The contractor shall specify the minimum, if not the exact, percentage of recycled product in the paper product, including both the secondary and postconsumer material content. This certification shall be furnished under penalty of perjury.

(c) The Legislature may, in consultation with the board, print a symbol on paper products selected by the Legislature. The symbol shall be similar to the following:

Printed on recycled paper. This symbol shall be printed only on paper products meeting the definition of recycled paper products in Section 12301.

(d) This section shall not prevent the Legislature from using existing stocks of paper products.

ARTICLE 3. RECYCLED MATERIALS, GOODS, AND SUPPLIES

12320. (a) The Legislature shall require contractors to certify in writing to the contracting officer, or his or her representative, whether the materials, goods, or supplies offered contain the minimum percentage of recycled product required by subdivision (d) of Section 12301. The contractor shall specify the minimum, if not exact, percentage of recycled product in the product, both the secondary and postconsumer material content. This certification shall be furnished under penalty of perjury.

(b) The Legislature, in consultation with the department and the board, shall review and revise the procurement specifications used by the Legislature in order to eliminate discrimination against the procurement or purchase of recycled products whenever quality of a recycled product is reasonably equal to the same product manufactured with virgin resources. In determining procurement specifications, with the exception of any specifications that have been established to preserve the public health and safety, all legislative procurement and purchasing specifications shall be established in a manner that results in the maximum legislative procurement and purchase of recycled products.

(c) The Legislature, in consultation with the board, shall establish purchasing practices that ensure, to the maximum extent feasible, the purchase of materials, goods, and supplies that may be recycled or reused when discarded.

(d) The Legislature shall give purchase preference to recycled products when all of the following apply:

(1) The product meets applicable standards.

(2) The product can be substituted for a comparable nonrecycled product.

(3) The product costs no more than a comparable nonrecycled product.

(e) To encourage the use of postconsumer waste, the Legislature's specifications shall require recycled product contracts to be awarded to the bidder whose product contains the greater

percentage of postconsumer material if the fitness and quality and price meet the requirements in subdivision (d) of Section 12301 and Section 12310.

(f) The Legislature shall set the following goals for purchases made by the Legislature or any individual or group of individuals purchasing on behalf of the Legislature:

(1) By January 1, 1991, at least 10 percent of legislative purchases are of recycled products.

(2) By January 1, 1993, at least 20 percent of legislative purchases are of recycled products.

(3) By January 1, 1995, at least 40 percent of legislative purchases are of recycled products.

(4) The goals specified in this subdivision shall be applied to the purchase by the Legislature of products described in subdivisions (b), (c), (d), (e), (f), and (g) of Section 12305 and shall be applied to the total dollar amount of the combined purchases of those products.

Each specified goal shall be met for each product listed pursuant to Section 12305. If at any time a goal has not been met, the Legislature and the department, in consultation with the board, shall review procurement policies of the Legislature and shall make recommendations for immediate revisions to ensure that each goal is met. Revisions include, but are not limited to, raising the purchasing preference and altering the goals for all or each recycled product. The department, in consultation with the board, shall present its conclusions and recommendations on these revisions of procurement policies to the Legislature in the department's annual report pursuant to Section 12225.

ARTICLE 41. COMMUNITY COLLEGES

20661. (a) The Chancellor of the California Community Colleges is authorized to enter into a contract on behalf of one or more community college districts, subject to the following restrictions:

(1) No district may be required to participate in any contract entered into pursuant to this section.

(2) The cost to each district that is a party to or a beneficiary of a contract entered into pursuant to this section must be lower than the cost the district could obtain through its standard contracting procedures. No contract for the procurement of goods or services may be made when a bid has been received by a participating district for the procurement of the same goods or services unless the contract would result in a lower price for the goods or services upon the same terms, conditions, and specifications.

(3) The state shall not incur any financial responsibility in connection with a contract entered into pursuant to this section.

(b) The Chancellor of the California Community Colleges is authorized to charge a fee, commission, or other charge to either or both of the following:

(1) Each provider of goods or services under a contract entered into pursuant to this section.

(2) Each community college district that the chancellor enters into a contract on behalf of pursuant to this section.

(c) On or before January 1, 2001, the Chancellor of the California Community Colleges shall report to the Legislature and the Governor on contracts entered into pursuant to this section and any resultant cost savings.

(d) The Board of Governors of the California Community Colleges shall adopt regulations to implement this section.

20662. The Chancellor of the California Community Colleges is authorized to enter into a contract or other agreement with the governing board of any community college district whereby the district performs services or acts as a fiscal agent on behalf of the California Community colleges. This section shall apply only when the funds for the contract or agreement are in satisfaction of the state obligation to provide funding pursuant to Section 8 of Article XVI of the California Constitution.

Government Code

TITLE 1. GENERAL
DIVISION 3.6. CLAIMS AND ACTIONS AGAINST PUBLIC ENTITIES AND PUBLIC
EMPLOYEES
PART 3. CLAIMS AGAINST PUBLIC ENTITIES
CHAPTER 4. PRESENTATION OF CLAIMS TO STATE CONTROLLER

926.19. (a) Unless otherwise provided for by statute, any state agency that fails to pay a person any undisputed payment or refund due to that person shall be liable for interest on the undisputed amount pursuant to this section. The interest shall be paid out of the agency's funds and shall accrue at a rate equal to the interest accrued in the Pooled Money Investment Account minus 1 percent over the term that the payment or refund was held by the agency, beginning on the 31st day after the agency provides notice to the person that a payment or refund is owed to that person or after the agency receives notice from the person that an undisputed payment or refund is due. The interest shall cease to accrue on the date full payment or refund is made.

(b) If the state agency's failure to make payment as required by this section is the result of a dispute between the state agency and the person to whom money is owed, interest shall begin to accrue on the 31st day after the dispute has been settled by mutual agreement, arbitration, or court decision. A state agency may dispute a payment or refund if the state agency so notifies the person within 15 days after the state agency receives notice from the person that the payment or refund is due.

I If the state agency is not authorized to make a payment or refund to a person pursuant to this section, that state agency shall submit the claim to the Controller's office within 15 days of receiving a claim, or shall be liable for an interest penalty beginning on the 16th day, which shall be paid out of the state agency's funds and shall continue to accrue until the claim is received by the Controller's office. After the claim is forwarded to the Controller's office, an interest penalty fee shall begin to accrue on the 16th day after receipt by the Controller's office, and shall be paid out of the Controller's funds. In any event, the interest penalty shall cease to accrue on the date full payment is made to the person.

(d) (1) In the event that a payment or refund is the joint responsibility of more than one state agency, not including the Controller's office, and neither agency is authorized to make a payment or refund, each agency shall forward the claim to the Controller's office within 15 days of receipt. Interest shall begin to accrue on the 16th day, pursuant to subdivision I. Any accrued interest shall be the responsibility of the state agency that delays the transmittal of the claim to the Controller.

(2) If either of the responsible agencies is authorized to make a payment or refund directly to the person, each agency shall have 15 days to transmit the claim to the other agency or pay the person. Interest shall begin to accrue on the 16th day, and shall be the responsibility of the agency delaying the payment process.

(e) When a state agency is required by this section to pay penalties that accumulate in excess of one thousand dollars (\$1,000) in one fiscal year, the head of the state agency shall submit to the Legislature, within 60 days following the end of the fiscal year, a written report on the actions taken to correct the problem, including recommendations on actions to avoid a recurrence of the problem and recommendations as to statutory changes, if needed.

(f) A court shall award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to this section where it is found that the state agency has violated this section. The costs and fees shall be paid by the state agency at fault and shall not become a personal economic liability of any public officer or employee thereof. In the case of disputed payments or refunds, nothing in this section shall be construed as precluding a court from awarding a prevailing party the interest accrued while the dispute was pending.

(g) No state agency shall seek additional appropriations to pay interest that accrues as a result of this section.

(h) No person shall receive an interest payment pursuant to this section if it is determined that the person has intentionally overpaid on a liability solely for the purpose of receiving interest.

(i) No interest shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally mandated program or that is directly dependent upon the receipt of federal funds by a state agency.

(j) This section shall not apply to any of the following:

(1) Payments, refunds, or credits for income tax purposes.

(2) Payment of claims for reimbursement for health care services or mental health services provided under the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(3) Any payment made pursuant to a public social service or public health program to a recipient of benefits under that program.

(4) Payments made on claims by the State Board of Control.

(5) Payments made by the Commission on State Mandates.

(6) Payments made by the Department of Personnel Administration pursuant to Section 19823.

927. (a) This chapter shall be known and may be cited as the California Prompt Payment Act.

(b) It is the intent of the Legislature that state agencies pay properly submitted, undisputed invoices within 45 days of receipt, or automatically calculate and pay the appropriate late payment penalties as specified in this chapter.

Notwithstanding any other provision of law, this chapter shall apply to all state agencies, including, but not limited to, the Public Employees' Retirement System, the State Teachers' Retirement System, the Treasurer, and the Department of General Services.

927.1. (a) A state agency that acquires property or services pursuant to a contract with a business, including any approved change order or contract amendment, shall make payment to the person or business on the date required by the contract and as required by Section 927.4 or be subject to a late payment penalty.

(b) Except in the event of an emergency as provided in Section 927.11, effective January 1, 1999, the late payment penalties specified in this chapter may not be waived, altered, or limited by a state agency acquiring property or services pursuant to a contract or by any person or business contracting with a state agency to provide property or services.

927.2. The following definitions apply to this chapter:

(a) "Claim schedule" means a schedule of invoices prepared and named claimant.

(b) "Invoice" means a bill or claim that requests payment on a contract under which a state agency acquires property or services.

"Medi-Cal program" means the program established pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.

(d) "Nonprofit public benefit corporation" means a corporation, as defined by subdivision (b) of Section 5046 of the Corporations Code, that has registered with the Department of General Services as a small business.

(e) "Reasonable cause" means a determination by a state agency that any of the following conditions are present:

(1) There is a discrepancy between the invoice or claimed amount and the provisions of the contract.

(2) There is a discrepancy between the invoice or claimed amount and either the contractor's actual delivery of property or services to the state or the state's acceptance of those deliveries.

(3) Additional evidence supporting the validity of the invoice or claimed amount is required to be provided to the state agency by the contractor.

(4) The invoice has been improperly executed or needs to be corrected by the contractor.

(5) The state agency making the determination or the contractor involved has been subject to a computing or accounting failure related to the Year 2000 Problem.

(f) "Required payment approval date" means the date on which payment is due as specified in a contract or, if a specific date is not established by the contract, 30 calendar days following the date upon which an undisputed invoice is received by a state agency.

(g) "Received by a state agency" means the date an invoice is delivered to the state location or party specified in the contract or, if a state location or party is not specified in the contract, wherever otherwise specified by the state agency.

(h) "Revolving fund" means a fund established pursuant to Article 5 (commencing with Section 16400) of Division 4 of Title 2.

(i) "Small business" means a business certified as a "small business" in accordance with subdivision I of Section 14837.

(j) "Small business" and "nonprofit organization" mean, in reference to providers under the Medi-Cal program, a business or organization that meets all of the following criteria:

(1) The principal office is located in California.

(2) The officers, if any, are domiciled in California.

(3) If a small business, it is independently owned and operated.

(4) The business or organization is not dominant in its field of operation.

(5) Together with any affiliates, the business or organization has gross receipts from business operations that do not exceed three million dollars (\$3,000,000) per year, except that the Director of Health Services may increase this amount if the director deems that this action would be in furtherance of the intent of this chapter.

(k) "Year 2000 Problem" has the same meaning as that set forth in subdivision (a) of Section 3269 of the Civil Code.

927.3. Except where payment is made directly by a state agency pursuant to Section 927.6, any undisputed invoice received by a state agency shall be submitted to the Controller for payment by the required payment approval date. A state agency may dispute an invoice submitted by a contractor for reasonable cause if the state agency notifies the contractor within 15 working days from receipt of the invoice, or delivery of the property or services, whichever is later. No state employee shall dispute an invoice, on the basis of minor or technical defects, in order to circumvent or avoid the general intent or any of the specific provisions of this chapter.

927.4. Except as otherwise provided in this chapter, to avoid late payment penalties, the maximum time from state agency receipt of an undisputed invoice to issuance of a warrant for payment is 45 calendar days, including not more than 30 calendar days from the state agency to submit a correct claim schedule to the Controller, and not more than 15 calendar days for the Controller to issue the warrant.

927.5. This chapter shall not apply to claims for reimbursement for health care services provided under the Medi-Cal program, unless the Medi-Cal health care services provider is a small business or nonprofit organization. In applying this section to claims submitted to the state, or its fiscal intermediary, by providers of services or equipment under the Medi-Cal program, payment for claims shall be due 30 days after a claim is received by the state or its fiscal intermediary, unless reasonable cause for nonpayment exists. With regard to Medi-Cal claims, reasonable cause shall include review of claims to determine medical necessity, review of claims for providers subject to special prepayment fraud and abuse controls, and claims that require review by the fiscal intermediary or State Department of Health Services due to special circumstances, including, but not limited to, the Year 2000 Problem. Claims requiring special review as specified above shall not be eligible for a late payment penalty.

927.6. (a) State agencies shall pay applicable penalties, without requiring that the contractor submit an additional invoice for these amounts, whenever the state agency fails to submit a correct claim schedule to the Controller by the required payment approval date. The penalty shall

cease to accrue on the date the state agency submits the claim schedule to the Controller for payment, and shall be paid for out of the state agency's funds. If the contractor is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the state agency shall pay to the contractor a penalty of 0.25 percent of the amount due, per calendar day, from the required payment date. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars (\$500,000).

(b) For all other businesses, the state agency shall pay a penalty at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars (\$75) or less, the penalty shall be waived and not paid by the state agency. On an exception basis, state agencies may avoid payment of penalties, for failure to submit a correct claim schedule to the Controller by the required payment approval date, by paying the contractor directly, from the state agency's revolving fund within 45 calendar days following the date upon which an undisputed invoice is received by the state agency.

927.7. The Controller shall pay contractors within 15 calendar days of receipt of a correct claim schedule from the state agency. If the Controller fails to make payment within 15 calendar days of receipt of the claim schedule from a state agency, the Controller shall pay applicable penalties to the contractor without requiring that the contractor submit an invoice for these amounts. Penalties shall cease to accrue on the date full payment is made, and shall be paid for out of the Controller's funds. If the contractor is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the Controller shall pay to the contractor a penalty of 0.25 percent of the amount due, per calendar day, from the 16th calendar day following receipt of the claim schedule from the state agency. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract in an amount less than five hundred thousand dollars (\$500,000). For all other businesses, the Controller shall pay penalties at a rate of 1 percent above the rate accrued on June 30 of the prior year by the Pooled Money Investment Account, not to exceed a rate of 15 percent, except that, if the amount of the penalty is seventy-five dollars (\$75) or less, the penalty shall be waived and not paid by the Controller.

927.8. State agencies shall avoid seeking any additional appropriation to pay penalties that accrue as a result of the agency's failure to make timely payments as required by this chapter. Any state agency that requests that the Legislature make a deficiency appropriation for the agency shall identify what portion, if any, of the requested amount is required because of any penalties imposed by this chapter.

927.9. (a) On an annual basis, within 90 calendar days following the end of each fiscal year, state agencies shall provide the Director of General Services with a report on late payment penalties that were paid by the state agency in accordance with this chapter during the preceding fiscal year.

(b) At a minimum, the report shall identify the total number and dollar amount of late payment penalties paid. State agencies may, at their own initiative, provide the director with other relevant performance measures. The director shall prepare a report listing the number and total dollar amount of all late payment penalties paid by each state agency during the preceding fiscal year, together with other relevant performance measures, and shall make the information available to the public.

927.10. State agencies shall encourage contractors to promptly pay their subcontractors and suppliers, especially those that are small businesses. In furtherance of this policy, state agencies shall utilize expedited payment processes to enable faster payment by prime contractors to their subcontractors and suppliers, and shall promptly respond to any subcontractor or supplier inquiries regarding the status of payments made to prime contractors.

927.11. (a) Except in the case of a contract with a certified small business, a nonprofit organization or a nonprofit public benefit corporation, if an invoice from a business under a contract with the Department of Forestry and Fire Protection would become subject to late payment penalties during the annually declared fire season, as declared by the Director of Forestry and Fire Protection, then the required payment approval date shall be extended by 30 calendar days.

(b) No nonprofit public benefit corporation shall be eligible for a late payment penalty if a state agency fails to make timely payment because no Budget Act has been enacted.

If the Director of Finance determines that a state agency or the Controller is unable to promptly pay an invoice as provided for by this chapter due to a major calamity, disaster, or criminal act, then otherwise applicable late payment penalty provisions contained in Section 927.7 shall be suspended except as they apply to a contractor which is either a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program. The suspension shall remain in effect until the Director of Finance determines that the suspended late payment penalty provisions of this section should be reinstated.

(d) Except as provided in subdivision (b), in the event a state agency fails to make timely payment because no Budget Act has been enacted, penalties shall continue to accrue until the time that the invoice is paid.

927.12. Section 926.10 shall not apply to any contract covered by this chapter.

DIVISION 4. PUBLIC OFFICERS AND EMPLOYEES
CHAPTER 1. GENERAL
ARTICLE 4. PROHIBITIONS APPLICABLE TO SPECIFIED OFFICERS

1090. Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

1090.1. No officer or employee of the State nor any Member of the Legislature shall accept any commission for the placement of insurance on behalf of the State.

1091. (a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest.

(b) As used in this article, "remote interest" means any of the following:

(1) That of an officer or employee of a nonprofit corporation, except as provided in paragraph (8) of subdivision (a) of Section 1091.5.

(2) That of an employee or agent of the contracting party, if the contracting party has 10 or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office and the officer owns less than 3 percent of the shares of stock of the contracting party; and the employee or agent is not an officer or director of the contracting party and did not directly participate in formulating the bid of the contracting party.

For purposes of this paragraph, time of employment with the contracting party by the officer shall be counted in computing the three-year period specified in this paragraph even though the contracting party has been converted from one form of business organization to a different form of business organization within three years of the initial taking of office by the officer. Time of employment in that case shall be counted only if, after the transfer or change in organization, the real or ultimate ownership of the contracting party is the same or substantially similar to that which existed before the transfer or change in organization. For purposes of this paragraph, stockholders, bondholders, partners, or other persons holding an interest in the contracting party are regarded as having the "real or ultimate ownership" of the contracting party.

(3) That of an employee or agent of the contracting party, if all of the following conditions are met:

(A) The agency of which the person is an officer is a local public agency located in a county with a population of less than 4,000,000.

(B) The contract is competitively bid and is not for personal services.

(C) The employee or agent is not in a primary management capacity with the contracting party, is not an officer or director of the contracting party, and holds no ownership interest in the contracting party.

(D) The contracting party has 10 or more other employees.

(E) The employee or agent did not directly participate in formulating the bid of the contracting party.

(F) The contracting party is the lowest responsible bidder.

(4) That of a parent in the earnings of his or her minor child for personal services.

(5) That of a landlord or tenant of the contracting party.

(6) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm that renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of 10 percent or more in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(7) That of a member of a nonprofit corporation formed under the Food and Agricultural Code or a nonprofit corporation formed under the Corporations Code for the sole purpose of engaging in the merchandising of agricultural products or the supplying of water.

(8) That of a supplier of goods or services when those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.

(9) That of a person subject to the provisions of Section 1090 in any contract or agreement entered into pursuant to the provisions of the California Land Conservation Act of 1965.

(10) Except as provided in subdivision (b) of Section 1091.5, that of a director of or a person having an ownership interest of 10 percent or more in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor or creditor.

(11) That of an engineer, geologist, or architect employed by a consulting engineering or architectural firm. This paragraph applies only to an employee of a consulting firm who does not serve in a primary management capacity, and does not apply to an officer or director of a consulting firm.

(12) That of an elected officer otherwise subject to Section 1090, in any housing assistance payment contract entered into pursuant to Section 8 of the United States Housing Act of 1937 (42

U.S.C. Sec. 1437f) as amended, provided that the housing assistance payment contract was in existence before Section 1090 became applicable to the officer and will be renewed or extended only as to the existing tenant, or, in a jurisdiction in which the rental vacancy rate is less than 5 percent, as to new tenants in a unit previously under a Section 8 contract. This section applies to any person who became a public official on or after November 1, 1986.

(13) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity.

(14) That of a person owning less than 3 percent of the shares of a contracting party that is a for-profit corporation, provided that the ownership of the shares derived from the person's employment with that corporation.

(c) This section is not applicable to any officer interested in a contract who influences or attempts to influence another member of the body or board of which he or she is a member to enter into the contract.

(d) The willful failure of an officer to disclose the fact of his or her interest in a contract pursuant to this section is punishable as provided in Section 1097. That violation does not void the contract unless the contracting party had knowledge of the fact of the remote interest of the officer at the time the contract was executed.

1091.1. The prohibition against an interest in contracts provided by this article or any other provision of law shall not be deemed to prohibit any public officer or member of any public board or commission from subdividing lands owned by him or in which he has an interest and which subdivision of lands is effected under the provisions of Division 2 (commencing with Section 66410) of Title 7 of the Government Code or any local ordinance concerning subdivisions; provided, that (a) said officer or member of such board or commission shall first fully disclose the nature of his interest in any such lands to the legislative body having jurisdiction over the subdivision thereof, and (b) said officer or member of such board or commission shall not cast his vote upon any matter or contract concerning said subdivision in any manner whatever.

1091.2. Section 1090 shall not apply to any contract or grant made by local workforce investment boards created pursuant to the federal Workforce Investment Act of 1998 except where both of the following conditions are met:

(a) The contract or grant directly relates to services to be provided by any member of a local workforce investment board or the entity the member represents or financially benefits the member or the entity he or she represents.

(b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.

1091.3. Section 1090 shall not apply to any contract or grant made by a county children and families commission created pursuant to the California Children and Families Act of 1998 (Division 108 (commencing with Section 130100) of the Health and Safety Code), except where both of the following conditions are met:

(a) The contract or grant directly relates to services to be provided by any member of a county children and families commission or the entity the member represents or financially benefits the member or the entity he or she represents.

(b) The member fails to recuse himself or herself from making, participating in making, or in any way attempting to use his or her official position to influence a decision on the grant or grants.

1091.4. (a) As used in Section 1091, "remote interest" also includes a person who has a financial interest in a contract, if all of the following conditions are met:

(1) The agency of which the person is a board member is a special district serving a population of less than 5,000 that is a landowner voter district, as defined in Section 56050, that does not distribute water for any domestic use.

(2) The contract is for either of the following:

(A) The maintenance or repair of the district's property or facilities provided that the need for maintenance or repair services has been widely advertised. The contract will result in materially less expense to the district than the expense that would have resulted under reasonably available alternatives and review of those alternatives is documented in records available for public inspection.

(B) The acquisition of property that the governing board of the district has determined is necessary for the district to carry out its functions at a price not exceeding the value of the property, as determined in a record available for public inspection by an appraiser who is a member of a recognized organization of appraisers.

(3) The person did not participate in the formulation of the contract on behalf of the district.

(4) At a public meeting, the governing body of the district, after review of written documentation, determines that the property acquisition or maintenance and repair services cannot otherwise be obtained at a reasonable price, that the contract is in the best interests of the district, and adopts a resolution stating why the contract is necessary and in the best interests of the district.

(b) If a party to any proceeding challenges any fact or matter required by paragraph (2), (3), or (4) of subdivision (a) to qualify as a remote interest under subdivision (a), the district shall bear the burden of proving this fact or matter.

1091.5. (a) An officer or employee shall not be deemed to be interested in a contract if his or her interest is any of the following:

(1) The ownership of less than 3 percent of the shares of a corporation for profit, provided that the total annual income to him or her from dividends, including the value of stock dividends, from the corporation does not exceed 5 percent of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5 percent of his or her total annual income.

(2) That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty.

(3) That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the board.

(4) That of a landlord or tenant of the contracting party if the contracting party is the federal government or any federal department or agency, this state or an adjoining state, any department or agency of this state or an adjoining state, any county or city of this state or an adjoining state, or any public corporation or special, judicial, or other public district of this state or an adjoining state unless the subject matter of the contract is the property in which the officer or employee has the interest as landlord or tenant in which event his or her interest shall be deemed a remote interest within the meaning of, and subject to, the provisions of Section 1091.

(5) That of a tenant in a public housing authority created pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code in which he or she serves as a member of the board of commissioners of the authority or of a community development commission created pursuant to Part 1.7 (commencing with Section 34100) of Division 24 of the Health and Safety Code.

(6) That of a spouse of an officer or employee of a public agency in his or her spouse's employment or officeholding if his or her spouse's employment or officeholding has existed for at least one year prior to his or her election or appointment.

(7) That of a nonsalaried member of a nonprofit corporation, provided that this interest is disclosed to the body or board at the time of the first consideration of the contract, and provided further that this interest is noted in its official records.

(8) That of a noncompensated officer of a nonprofit, tax-exempt corporation, which, as one of its primary purposes, supports the functions of the body or board or to which the body or board has a legal obligation to give particular consideration, and provided further that this interest is noted in its official records.

For purposes of this paragraph, an officer is "noncompensated" even though he or she receives reimbursement from the nonprofit, tax-exempt corporation for necessary travel and other actual expenses incurred in performing duties of his or her office.

(9) That of a person receiving salary, per diem, or reimbursement for expenses from a government entity, unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record.

(10) That of an attorney of the contracting party or that of an owner, officer, employee, or agent of a firm which renders, or has rendered, service to the contracting party in the capacity of stockbroker, insurance agent, insurance broker, real estate agent, or real estate broker, if these individuals have not received and will not receive remuneration, consideration, or a commission as a result of the contract and if these individuals have an ownership interest of less than 10 percent in the law practice or firm, stock brokerage firm, insurance firm, or real estate firm.

(11) Except as provided in subdivision (b), that of an officer or employee of or a person having less than a 10-percent ownership interest in a bank, bank holding company, or savings and loan association with which a party to the contract has a relationship of borrower or depositor, debtor, or creditor.

(12) That of (A) a bona fide nonprofit, tax-exempt corporation having among its primary purposes the conservation, preservation, or restoration of park and natural lands or historical resources for public benefit, which corporation enters into an agreement with a public agency to provide services related to park and natural lands or historical resources and which services are found by the public agency, prior to entering into the agreement or as part of the agreement, to be necessary to the public interest to plan for, acquire, protect, conserve, improve, or restore park and natural lands or historical resources for public purposes and (B) any officer, director, or employee acting pursuant to the agreement on behalf of the nonprofit corporation. For purposes of this paragraph, "agreement" includes contracts and grants, and "park," "natural lands," and "historical resources" shall have the meanings set forth in subdivisions (d), (g), and (i) of Section 5902 of the Public Resources Code. Services to be provided to the public agency may include those studies and related services, acquisitions of property and property interests, and any activities related to those studies and acquisitions necessary for the conservation, preservation, improvement, or restoration of park and natural lands or historical resources.

(b) An officer or employee shall not be deemed to be interested in a contract made pursuant to competitive bidding under a procedure established by law if his or her sole interest is that of an officer, director, or employee of a bank or savings and loan association with which a party to the contract has the relationship of borrower or depositor, debtor or creditor.

1092. Every contract made in violation of any of the provisions of Section 1090 may be avoided at the instance of any party except the officer interested therein. No such contract may be avoided because of the interest of an officer therein unless such contract is made in the official capacity of such officer, or by a board or body of which he is a member.

1092.5. Notwithstanding Section 1092, no lease or purchase of, or encumbrance on, real property may be avoided, under the terms of Section 1092, in derogation of the interest of a good faith lessee, purchaser, or encumbrancer where the lessee, purchaser, or encumbrancer paid value and acquired the interest without actual knowledge of a violation of any of the provisions of Section 1090.

1093. The State Treasurer and Controller, county and city officers, and their deputies and clerks shall not purchase or sell, or in any manner receive for their own or any other person's use or benefit any State' county or city warrants, scrip, orders, demands, claims, or other evidences of indebtedness against the State, or any county or city thereof. This section does not apply to

evidences of indebtedness issued to or held by such an officer, deputy or clerk for services rendered by them, nor to evidences of the funded indebtedness of the State, county, or city.

1094. Every officer whose duty it is to audit and allow the accounts of other state, county, or city officers shall, before allowing such accounts, require each of such officers to make and file with him an affidavit or certificate under penalty of perjury that he has not violated any of the provisions of this article, and any individual who willfully makes and subscribes such certificate to an account which he knows to be false as to any material matter shall be guilty of a felony and upon conviction thereof shall be subject to the penalties prescribed for perjury by the Penal Code of this State.

1095. Officers charged with the disbursement of public moneys shall not pay any warrant or other evidence of indebtedness against the State, county, or city when it has been purchased, sold, received, or transferred contrary to any of the provisions of this article.

1096. Upon the officer charged with the disbursement of public moneys being informed by affidavit that any officer, whose account is about to be settled, audited, or paid by him, has violated any of the provisions of this article, the disbursing officer shall suspend such settlement or payment, and cause the district attorney to prosecute the officer for such violation. If judgment is rendered for the defendant upon such prosecution, the disbursing officer may proceed to settle, audit, or pay the account as if no affidavit had been filed.

1097. Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing script, or other evidences of indebtedness, including any member of the governing board of a school district, who willfully violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

1098. (a) Any current public officer or employee who willfully and knowingly discloses for pecuniary gain, to any other person, confidential information acquired by him or her in the course of his or her official duties, or uses any such information for the purpose of pecuniary gain, is guilty of a misdemeanor.

(b) As used in this section:

(1) "Confidential information" means information to which all of the following apply:

(A) At the time of the use or disclosure of the information, the information is not a public record subject to disclosure under the Public Records Act.

(B) At the time of the use or disclosure of the information, the disclosure is prohibited by (i) a statute, regulation, or rule which applies to the agency in which the officer or employee serves; (ii) the statement of incompatible activities adopted pursuant to Section 19990 by the agency in which the officer or employee serves; or (iii) a provision in a document similar to a statement of incompatible activities if the agency in which the officer or employee serves is a local agency.

(C) The use or disclosure of the information will have, or could reasonably be expected to have, a material financial effect on any investment or interest in real property which the officer or employee, or any person who provides pecuniary gain to the officer or employee in return for the information, has at the time of the use or disclosure of the information or acquires within 90 days following the use or disclosure of the information.

(2) For purposes of paragraph (1):

(A) "Interest in real property" has the definition prescribed by Section 82033.

(B) "Investment" has the definition prescribed by Section 82034.

(C) "Material financial effect" has the definition prescribed by Sections 18702 and 18702.2 of Title 2 of the California Administrative Code, as those sections read on September 1, 1987.

(3) "Pecuniary gain" does not include salary or other similar compensation from the officer's or the employee's agency'

(c) This section shall not apply to any disclosure made to any law enforcement agency, nor to any disclosure made pursuant to Sections 10542 and 10543.

(d) This section is not intended to supersede, amend, or add to subdivision (b) of Section 8920 regarding prohibited conduct of Members of the Legislature.

DIVISION 5. PUBLIC WORK AND PUBLIC PURCHASES CHAPTER 8. PURCHASES

4475. "State agency," as used in this chapter, means any state agency defined in Section 11000, which is authorized to enter into contracts and shall include, but not be limited to, the Department of Public Works, the Department of Water Resources, the Department of General Services, the Trustees of the California State University, and the Board of Regents of the University of California.

4476. "Person," as used in this chapter means any individual, corporation, association, or any other entity organized for the purpose of conducting business.

4477. No state agency shall enter into any contract for the purchase of supplies, equipment, or services from any person who is in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district, or is subject to a cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions, or is finally determined to be in violation of provisions of federal law relating to air or water pollution.

4478. The provisions of this chapter shall not apply to contracts with a dollar value below the required level for competitive bidding established in Section 10301 of the Public Contract Code.

4479. Each state agency shall exercise due diligence in determining whether or not one or more persons have divided a contract to avoid the limitation of Section 4478.

4480. The provisions of this chapter shall not apply when a person otherwise prohibited from contracting with the state under this chapter is the sole source of a product or services required by the state.

4481. Each local agency or board set forth in Section 4477 shall notify within seven days after determination thereof, the Water Resources Control Board or Air Resources Board of noncompliance with any final order, rule, or regulation or cease and desist order issued by them or of any violation reported pursuant to this section which has been cured and any action taken by the local agency or board. The Water Resources Control Board and the Air Resources Board shall also provide such notification as to finally determined violators of federal law relating to air or water pollution. The Water Resources Control Board and Air Resources Board shall provide a list of persons finally determined to be in violation of such laws, orders, rules, or regulations to state agencies on a monthly basis.

4482. The provisions of this chapter shall not apply to contracts executed prior to the effective date of this chapter.

CHAPTER 10.5 TARGET AREA CONTRACT PREFERENCE ACT

4530. This chapter shall be known as the "Target Area Contract Preference Act."

4531. The Legislature hereby declares that it serves a public purpose, and is of benefit to the state, to encourage and facilitate job maintenance and job development in distressed and declining areas of cities and towns in the state. It is the intent of the Legislature to further these goals by providing appropriate preferences to California based companies submitting bids or proposals for state contracts to be performed at worksites in distressed areas by persons with a high risk of unemployment when the contract is for goods or services in excess of one hundred thousand dollars (\$100,000).

4532. As used in this chapter:

(a) "Block group" means the smallest area for which the United States Department of Commerce, Bureau of the Census provides data on personal income.

(b) "Urbanized area" means a central city or cities and surrounding closely settled territory, as defined by the United States Department of Commerce, Bureau of the Census in the Federal Register, Vol. 39, Number 85, for Wednesday, May 1, 1974, at pages 15202-15203 and as periodically updated.

(c) "Cluster of block groups" means one or more contiguous block groups.

(d) "Distressed" means an urbanized area, within the State of California and as identified by the Office of Planning and Research, which contains at least 3,000 people in a cluster of block groups, each of which meet at least five of the following criteria according to the most recent available census information compared to the last statewide census:

(1) The percentage of the block group's population over age 25 with less than a high school education was within the upper quartile of all block groups.

(2) The unemployment rate of the block group was within the upper quartile of all block groups.

(3) The per capita income of the block group was within the lower quartile of all block groups.

(4) The percentage of the block group's households which were female-headed households in poverty with children present was within the upper quartile of all block groups.

(5) The percentage of the block group's population over 65 who were in poverty was within the upper quartile of all block groups.

(6) The percentage of the block group's households with more than 1.01 persons per room was within the upper quartile of all block groups.

(7) The percentage of the block group's population younger than 18 who were in poverty was within the upper quartile of all block groups.

(8) The percentage of the block group's population who were nonwhite or hispanic was within the upper quartile of all block groups.

(e) "Approved special census" means a special census approved by the Population Research Unit of the Department of Finance.

(f) "Person with a high risk of unemployment" means a person who:

(1) As a member of one of the eligible groups defined in Section 321 of Public Law 95-600, qualifies an employer who hires him or her for the Targeted Jobs Tax Credit. These groups are: economically disadvantaged youth, economically disadvantaged Vietnam-era veterans, economically disadvantaged ex-convicts, vocational rehabilitation referrals, youth participating in a qualified cooperative education program, recipients of supplemental security income benefits under Title XVI of the Social Security Act, and general assistance recipients.

(2) Would have qualified an employer hiring him or her for the Work Incentive/Welfare Tax Credit authorized by Section 322 of Public Law 95-600. These persons include applicants and

recipients of aid to families with dependent children who would have registered for the Work Incentive Program, and aid to families with dependent children recipients who have been receiving welfare for at least 90 days.

(g) "Poverty" means the poverty level, as defined by the United States Department of Commerce, Bureau of the Census in the Federal Register, Volume 43, Number 87, for Thursday, May 4, 1978, at pages 19260-19269, and as periodically updated.

(h) "California based company" means either of the following:

(1) A business or corporation whose principal office is located in California, and the owners, or officers if the entity is a corporation, are domiciled in California.

(2) A business or corporation that has a major office or manufacturing facility located in California and that has been licensed by the state on a continuous basis to conduct business within the state and has continuously employed California residents for work within the state during the three years prior to submitting a bid or proposal for a state contract.

(i) "Worksite" means either of the following:

(1) A business located within a distressed area.

(2) A business located in directly adjoining census tract blocks that when attached to the distressed area forms a contiguous boundary. A company that intends to perform the work at a worksite described in this paragraph shall submit a map with the bid or proposal identifying where the worksite is located.

4533. Whenever the state prepares a solicitation for a contract for goods in excess of one hundred thousand dollars (\$100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies who demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50 percent of the hours shall be accomplished at an identified worksite or worksites located in a distressed area.

4533.1. Where a bidder complies with the provisions of Section 4533, or the worksite or worksites where at least 50 percent of the labor required to perform the contract is within commuting distance of a distressed area, the state shall award a 1-percent preference for bidders who certify under penalty of perjury to hire persons with high risk of unemployment equal to 5 to 9 percent of its work force during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons with high risk of unemployment equal to 10 to 14 percent of its work force during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons with high risk of unemployment equal to 15 to 19 percent of its work force during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons with high risk of unemployment equal to 20 or more percent of its work force during the period of contract performance.

4534. In evaluating proposals for contracts for services in excess of one hundred thousand dollars (\$100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies who demonstrate and certify under penalty of perjury that not less than 90 percent of the total labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in a distressed area.

4534.1. Where a bidder complies with the provisions of Section 4534, the state shall award the additional preferences as set forth in Section 4533.1 as appropriate.

4535. All state contracts issued to bidders who are awarded preferences under this chapter shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

4535.1. A business which requests and is given the preference provided for in Section 4533, 4533.1, 4534, or 4534.1 by reason of having furnished a false certification, and which by reason of that certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(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 subdivision (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 directly or indirectly transact any business with the state for a period of not less than three months and not more than 24 months.

Prior to the 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.

4535.2. (a) The maximum preference and incentive a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference and incentive cost under this chapter exceed fifty thousand dollars (\$50,000) for any bid, nor shall the combined cost of preferences and incentives granted pursuant to this chapter and any other provision of law exceed one hundred thousand dollars (\$100,000). In those cases where the 15-percent cumulated preference and incentive cost would exceed the one hundred thousand dollar (\$100,000) maximum preference and incentive cost limit, the one hundred thousand dollar (\$100,000) maximum preference and incentive cost limit shall apply.

(b) Notwithstanding the provisions of this chapter, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this chapter, shall not result in the denial of the award to a small business bidder.

This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference and incentive.

4535.3. The Department of General Services, with the cooperation of the Employment Development Department, the Department of Industrial Relations and the Office of Planning and Research, and under the direction of the State and Consumer Services Agency, shall adopt appropriate rules, regulations, and guidelines to implement this chapter.

DIVISION 7. MISCELLANEOUS CHAPTER 2.6. STATE PAYMENT CARD ACT

6160. The Legislature finds and declares that there are costs associated with all forms of payment, including cash and checks. The Legislature further finds and declares that by accepting payment by credit card or other payment devices, state agencies will be able to take advantage of new technologies that will improve their efficiency and will increase consumer convenience and choice by providing state consumers with an alternative method of payment.

6161. For the purposes of this chapter:

(a) "Cardholder" means a person making a payment to a state agency by credit card or payment device.

(b) "Credit card" shall have the same meaning as provided in subsection (k) of Section 1602 of Title 15 of the United States Code (Section 103(k) of the federal Truth in Lending Act, and regulations promulgated thereunder).

(c) "Director" means the Director of General Services.

(d) "In person" means from one natural person to another who, as an employee or other representative of a state agency, accepts payment and processes the payment according to the procedures of the agency.

(e) "Payment device" shall have the same meaning as the definition of "accepted card or other means of access" set forth in paragraph (1) of Section 1693a of Title 15 of the United States Code (Section 903(1) of the federal Electronic Fund Transfer Act), and for purposes of this chapter shall also include a card that enables a person to pay for transactions through the use of value stored on the card itself.

(f) "Person" means a natural person or an organization, including a corporation, partnership, limited liability company, proprietorship, association, cooperative, estate, trust, or government unit.

(g) "State agency" shall have the same meaning as set forth in Section 11000.

6162. (a) Except as provided in Section 6159, the Director of General Services, or his or her designee, may negotiate and enter into any contracts necessary to implement or facilitate the acceptance of credit cards or other payment devices by state agencies. The authority granted to the director pursuant to this section shall include the discretion to negotiate and agree to specific terms applicable to each state agency, including, but not limited to, the terms regarding any payment of fees to third parties for the acceptance of credit cards or other payment devices, types of payments, any limitations on amounts and limits of liabilities that would be eligible for payment by credit card or other payment device, and operational requirements.

(b) The director may negotiate master contracts or other contracts that allow the cost-effective acceptance of payment by credit card or other payment device. Additionally, the director or any state agency negotiating these contracts shall use its best efforts to minimize the financial impact of credit card or other payment device acceptance on the state agency, taxpayers, and the public who use its services.

(c) The director, in consultation with the Director of e-Government, shall take steps to encourage the adoption of standard payment policies and procedures for all state agencies. Furthermore, a state agency may enter into an interagency agreement with another state agency for the purposes of establishing uniform policies and acquiring equipment to support payment by credit card or other payment device.

6163. (a) (1) Except as provided in paragraphs (2) and (3), all state agencies shall accept payment made by means of a credit card or other payment device.

(2) (A) A state agency may request that the director grant an exemption from paragraph (1) if the agency determines that its acceptance of payments by credit card or other payment device would have any of the following results:

(i) It would not be cost-effective.

(ii) It would result in a net additional unfunded cost to the agency.

(iii) It would result in a shortfall of revenues to the State of California.

(B) A request made pursuant to this paragraph shall state the reasons for the agency's determination. The director may request additional information from the requesting agency, and shall approve or deny the exemption request within 60 days of the receipt of all relevant information from the agency. The director also may request that the exemption be renewed on a periodic basis, and that the agency provide a plan for implementing paragraph (1).

(C) In determining cost-effectiveness, an agency may consider more than one year. In determining the cost-effectiveness of accepting payment by credit card and other payment

devices, the state agency shall consider all factors relating to costs and savings associated with accepting credit cards and other payment devices. However, an agency may accept payment by credit card or other payment device notwithstanding the cost-effectiveness, if, upon the agency's analysis, the additional level of customer service offered by these payment methods outweighs cost considerations.

(D) "Costs" for the purposes of this subdivision shall include, but not be limited to, the following:

- (i) Amounts paid to a third party for accepting the credit card or other payment device.
- (ii) Equipment costs, including telephone and maintenance expenses.
- (iii) Labor costs of the state agency related to processing payments made by a credit card or other payment device.

(E) "Savings" for the purposes of this subdivision shall include, but not be limited to, the following:

- (i) The use of the float by the applicable state agency.
- (ii) Reduction in bank fees that would be charged for payments made by cash and checks.
- (iii) The costs of handling cash, labor savings, theft or pilferage, reduced storage, and security and transit of handling and holding cash.
- (iv) The costs of handling checks.
- (v) Dishonored check costs.
- (vi) Decreased facility needs.
- (vii) Increased collection of mandated payments.
- (viii) Increased sales of discretionary goods and services.
- (ix) Reduced paperwork.
- (x) Fewer in-person transactions, especially with the use of voice response units and kiosks.

(3) Notwithstanding paragraph (1), a state agency shall not accept payment by credit card or other payment device if the state agency is unable to enter into the contracts on terms that are acceptable to the agency, or if the director acting on behalf of the agency is unable to enter into contracts on terms that are acceptable to the director and the agency, as are necessary to enable the agency to accept payment by credit card or other payment device.

(4) If the Franchise Tax Board does not accept payment by credit card or other payment device as a result of this subdivision, then the law regarding credit card payments in existence prior to the effective date of the legislation adding this chapter shall apply to the Franchise Tax Board.

(b) The director may establish procedures to delegate the authority granted under this chapter to other state agencies so that these agencies may enter into contracts for accepting credit cards or other payment devices on behalf of the respective agency.

(c) For entities established under Article VI of the California Constitution, the authority of the director under this chapter shall rest with the administrative director of those entities.

(d) Any agency that intends to accept payment by credit card or other payment device pursuant to a master contract entered into by the director shall transmit a letter of intent so stating to the director.

6164. No officer or employee of a state agency, or other individual, who in the course of his or her employment or duty has or had access to credit card or payment device information provided to the state agency under this chapter shall disclose or make known in any manner information provided under this chapter or use the information for any unauthorized purpose. Any violation of this section shall be a misdemeanor.

6165. The Department of General Services and state agencies shall enter into interagency agreements to reimburse the Department of General Services for its costs in entering into contracts pursuant to this chapter.

6166. Any state agency accepting payment by a means of credit card, whether pursuant to this chapter or Section 19005 of the Revenue and Taxation Code, shall, when sending a billing statement, notify each payer permitted to make payment to that agency by means of a credit card

of his or her option of making payment by means of a credit card. Each state agency that sends a billing statement to an individual who is allowed to make payment to that agency by means of a credit card shall provide either of the following on that statement or on a document provided with the statement:

(a) A designated space on the payment form upon which the payer can provide a credit card number, expiration date, and signature.

(b) Complete instructions as to the procedure, by means of telephone or otherwise, that the payer must follow in order to pay by means of a credit card.

CHAPTER 3.5. INSPECTION OF PUBLIC RECORDS ARTICLE 1. GENERAL PROVISIONS

6250. In enacting this chapter, the Legislature, mindful of the right of individuals to privacy, finds and declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.

6251. This chapter shall be known and may be cited as the California Public Records Act.

6252. As used in this chapter:

(a) "State agency" means every state office, officer, department, division, bureau, board, and commission or other state body or agency, except those agencies provided for in Article IV (except Section 20 thereof) or Article VI of the California Constitution.

(b) "Local agency" includes a county; city, whether general law or chartered; city and county; school district; municipal corporation; district; political subdivision; or any board, commission or agency thereof; other local public agency; or entities that are legislative bodies of a local agency pursuant to subdivisions (c) and (d) of Section 54952.

(c) "Person" includes any natural person, corporation, partnership, limited liability company, firm, or association.

(d) "Public agency" means any state or local agency.

(e) "Public records" includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. "Public records" in the custody of, or maintained by, the Governor's office means any writing prepared on or after January 6, 1975.

(f) "Writing" means any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

(g) "Member of the public" means any person, except a member, agent, officer, or employee of a federal, state, or local agency acting within the scope of his or her membership, agency, office, or employment.

6252.5. Notwithstanding the definition of "member of the public" in Section 6252, an elected member or officer of any state or local agency is entitled to access to public records of that agency on the same basis as any other person. Nothing in this section shall limit the ability of elected members or officers to access public records permitted by law in the administration of their duties.

This section does not constitute a change in, but is declaratory of, existing law.

6252.6. Notwithstanding paragraph (2) of subdivision (a) of Section 827 of the Welfare and Institutions Code, after the death of a foster child who is a minor, the name, date of birth, and

date of death of the child shall be subject to disclosure by the county child welfare agency pursuant to this chapter.

6253. (a) Public records are open to inspection at all times during the office hours of the state or local agency and every person has a right to inspect any public record, except as hereafter provided.

Any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law.

(b) Except with respect to public records exempt from disclosure by express provisions of law, each state or local agency, upon a request for a copy of records that reasonably describes an identifiable record or records, shall make the records promptly available to any person upon payment of fees covering direct costs of duplication, or a statutory fee if applicable. Upon request, an exact copy shall be provided unless impracticable to do so.

(c) Each agency, upon a request for a copy of records, shall, within 10 days from receipt of the request, determine whether the request, in whole or in part, seeks copies of disclosable public records in the possession of the agency and shall promptly notify the person making the request of the determination and the reasons therefor. In unusual circumstances, the time limit prescribed in this section may be extended by written notice by the head of the agency or his or her designee to the person making the request, setting forth the reasons for the extension and the date on which a determination is expected to be dispatched. No notice shall specify a date that would result in an extension for more than 14 days. When the agency dispatches the determination, and if the agency determines that the request seeks disclosable public records, the agency shall state the estimated date and time when the records will be made available. As used in this section, "unusual circumstances" means the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request.

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request.

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein.

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data.

(d) Nothing in this chapter shall be construed to permit an agency to delay or obstruct the inspection or copying of public records. The notification of denial of any request for records required by Section 6255 shall set forth the names and titles or positions of each person responsible for the denial.

(e) Except as otherwise prohibited by law, a state or local agency may adopt requirements for itself that allow for faster, more efficient, or greater access to records than prescribed by the minimum standards set forth in this chapter.

6253.1. (a) When a member of the public requests to inspect a public record or obtain a copy of a public record, the public agency, in order to assist the member of the public make a focused and effective request that reasonably describes an identifiable record or records, shall do all of the following, to the extent reasonable under the circumstances:

(1) Assist the member of the public to identify records and information that are responsive to the request or to the purpose of the request, if stated.

(2) Describe the information technology and physical location in which the records exist.

(3) Provide suggestions for overcoming any practical basis for denying access to the records or information sought.

(b) The requirements of paragraph (1) of subdivision (a) shall be deemed to have been satisfied if the public agency is unable to identify the requested information after making a reasonable

effort to elicit additional clarifying information from the requester that will help identify the record or records.

(c) The requirements of subdivision (a) are in addition to any action required of a public agency by Section 6253.

(d) This section shall not apply to a request for public records if any of the following applies:

(1) The public agency makes available the requested records pursuant to Section 6253.

(2) The public agency determines that the request should be denied and bases that determination solely on an exemption listed in Section 6254.

(3) The public agency makes available an index of its records.

6253.2. (a) Notwithstanding any other provision of this chapter to the contrary, information regarding persons paid by the state to provide in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code or personal care services pursuant to Section 14132.95 of the Welfare and Institutions Code, shall not be subject to public disclosure pursuant to this chapter, except as provided in subdivision (b).

(b) Copies of names, addresses, and telephone numbers of persons described in subdivision (a) shall be made available, upon request, to an exclusive bargaining agent and to any labor organization seeking representation rights pursuant to subdivision (c) of Section 12301.6 or Section 12302 of the Welfare and Institutions Code or Chapter 10 (commencing with Section 3500) of Division 4 of Title 1.

This information shall not be used by the receiving entity for any purpose other than the employee organizing, representation, and assistance activities of the labor organization.

(c) This section shall apply solely to individuals who provide services under the In-Home Supportive Services Program (Article 7 (commencing with Section 12300) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code) or the Personal Care Services Program pursuant to Section 14132.95 of the Welfare and Institutions Code.

(d) Nothing in this section is intended to alter or shall be interpreted to alter the rights of parties under the Meyers-Milias-Brown Act (Chapter 10 (commencing with Section 3500) of Division 4) or any other labor relations law.

6253.4. (a) Every agency may adopt regulations stating the procedures to be followed when making its records available in accordance with this section.

The following state and local bodies shall establish written guidelines for accessibility of records. A copy of these guidelines shall be posted in a conspicuous public place at the offices of these bodies, and a copy of the guidelines shall be available upon request free of charge to any person requesting that body's records:

Department of Motor Vehicles

Department of Consumer Affairs

Department of Transportation

Department of Real Estate

Department of Corrections

Department of the Youth Authority

Department of Justice

Department of Insurance

Department of Corporations

Department of Managed Health Care

Secretary of State

State Air Resources Board

Department of Water Resources

Department of Parks and Recreation

San Francisco Bay Conservation and Development Commission

State Board of Equalization

State Department of Health Services

Employment Development Department
State Department of Social Services
State Department of Mental Health
State Department of Developmental Services
State Department of Alcohol and Drug Abuse
Office of Statewide Health Planning and Development
Public Employees' Retirement System
Teachers' Retirement Board
Department of Industrial Relations
Department of General Services
Department of Veterans Affairs
Public Utilities Commission
California Coastal Commission
State Water Resources Control Board
San Francisco Bay Area Rapid Transit District
All regional water quality control boards
Los Angeles County Air Pollution Control District
Bay Area Air Pollution Control District
Golden Gate Bridge, Highway and Transportation District
Department of Toxic Substances Control
Office of Environmental Health Hazard Assessment

(b) Guidelines and regulations adopted pursuant to this section shall be consistent with all other sections of this chapter and shall reflect the intention of the Legislature to make the records accessible to the public. The guidelines and regulations adopted pursuant to this section shall not operate to limit the hours public records are open for inspection as prescribed in Section 6253.

6253.5. Notwithstanding Sections 6252 and 6253, statewide, county, city, and district initiative, referendum, and recall petitions, petitions circulated pursuant to Section 5091 of the Education Code, petitions for the reorganization of school districts submitted pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, petitions for the reorganization of community college districts submitted pursuant to Part 46 (commencing with Section 74000) of the Education Code and all memoranda prepared by the county elections officials in the examination of the petitions indicating which registered voters have signed particular petitions shall not be deemed to be public records and shall not be open to inspection except by the public officer or public employees who have the duty of receiving, examining or preserving the petitions or who are responsible for the preparation of that memoranda and, if the petition is found to be insufficient, by the proponents of the petition and the representatives of the proponents as may be designated by the proponents in writing in order to determine which signatures were disqualified and the reasons therefor. However, the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a school district or a community college district attorney, and a city attorney shall be permitted to examine the material upon approval of the appropriate superior court.

If the proponents of a petition are permitted to examine the petition and memoranda, the examination shall commence not later than 21 days after certification of insufficiency.

(a) As used in this section, "petition" shall mean any petition to which a registered voter has affixed his or her signature.

(b) As used in this section "proponents of the petition" means the following:

(1) For statewide initiative and referendum measures, the person or persons who submit a draft of a petition proposing the measure to the Attorney General with a request that he or she prepare a title and summary of the chief purpose and points of the proposed measure.

(2) For other initiative and referenda on measures, the person or persons who publish a notice of intention to circulate petitions, or, where publication is not required, who file petitions with the elections official.

(3) For recall measures, the person or persons defined in Section 343 of the Elections Code.

(4) For petitions circulated pursuant to Section 5091 of the Education Code, the person or persons having charge of the petition who submit the petition to the county superintendent of schools.

(5) For petitions circulated pursuant to Article 1 (commencing with Section 35700) of Chapter 4 of Part 21 of the Education Code, the person or persons designated as chief petitioners under Section 35701 of the Education Code.

(6) For petitions circulated pursuant to Part 46 (commencing with Section 74000) of the Education Code, the person or persons designated as chief petitioners under Sections 74102, 74133, and 74152 of the Education Code.

6253.6. (a) Notwithstanding the provisions of Sections 6252 and 6253, information compiled by public officers or public employees revealing the identity of persons who have requested bilingual ballots or ballot pamphlets, made in accordance with any federal or state law, or other data that would reveal the identity of the requester, shall not be deemed to be public records and shall not be provided to any person other than public officers or public employees who are responsible for receiving those requests and processing the same.

(b) Nothing contained in subdivision (a) shall be construed as prohibiting any person who is otherwise authorized by law from examining election materials, including, but not limited to, affidavits of registration, provided that requests for bilingual ballots or ballot pamphlets shall be subject to the restrictions contained in subdivision (a).

6253.8. (a) Every final enforcement order issued by an agency listed in subdivision (b) under any provision of law that is administered by an entity listed in subdivision (b), shall be displayed on the entity's Internet website, if the final enforcement order is a public record that is not exempt from disclosure pursuant to this chapter.

(b) This section applies to the California Environmental Protection Agency and to all of the following entities within the agency:

(1) The State Air Resources Board.

(2) The California Integrated Waste Management Board.

(3) The State Water Resources Control Board, and each California regional water quality control board.

(4) The Department of Pesticide Regulation.

(5) The Department of Toxic Substances Control.

(c) (1) Except as provided in paragraph (2), for purposes of this section, an enforcement order is final when the time for judicial review has expired on or after January 1, 2001, or when all means of judicial review have been exhausted on or after January 1, 2001.

(2) In addition to the requirements of paragraph (1), with regard to a final enforcement order issued by the State Water Resources Control Board or a California regional water quality control board, this section shall apply only to a final enforcement order adopted by that board or a regional board at a public meeting.

(d) An order posted pursuant to this section shall be posted for not less than one year.

(e) The California Environmental Protection Agency shall oversee the implementation of this section.

(f) This section shall become operative April 1, 2001.

6253.9. (a) Unless otherwise prohibited by law, any agency that has information that constitutes an identifiable public record not exempt from disclosure pursuant to this chapter that is in an electronic format shall make that information available in an electronic format when requested by any person and, when applicable, shall comply with the following:

(1) The agency shall make the information available in any electronic format in which it holds the information.

(2) Each agency shall provide a copy of an electronic record in the format requested if the requested format is one that has been used by the agency to create copies for its own use or for

provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

(b) Notwithstanding paragraph (2) of subdivision (a), the requester shall bear the cost of producing a copy of the record, including the cost to construct a record, and the cost of programming and computer services necessary to produce a copy of the record when either of the following applies:

(1) In order to comply with the provisions of subdivision (a), the public agency would be required to produce a copy of an electronic record and the record is one that is produced only at otherwise regularly scheduled intervals.

(2) The request would require data compilation, extraction, or programming to produce the record.

(c) Nothing in this section shall be construed to require the public agency to reconstruct a record in an electronic format if the agency no longer has the record available in an electronic format.

(d) If the request is for information in other than electronic format, and the information also is in electronic format, the agency may inform the requester that the information is available in electronic format.

(e) Nothing in this section shall be construed to permit an agency to make information available only in an electronic format.

(f) Nothing in this section shall be construed to require the public agency to release an electronic record in the electronic form in which it is held by the agency if its release would jeopardize or compromise the security or integrity of the original record or of any proprietary software in which it is maintained.

(g) Nothing in this section shall be construed to permit public access to records held by any agency to which access is otherwise restricted by statute.

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property

involved, the date, time, and location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective

public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(l) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary, provided that public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695) and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(bb) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code on or after January 1, 2004, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

6254.1. (a) Except as provided in Section 6254.7, nothing in this chapter requires disclosure of records that are the residence address of any person contained in the records of the Department of Housing and Community Development, if the person has requested confidentiality of that information, in accordance with Section 18081 of the Health and Safety Code.

(b) Nothing in this chapter requires the disclosure of the residence or mailing address of any person in any record of the Department of Motor Vehicles except in accordance with Section 1808.21 of the Vehicle Code.

(c) Nothing in this chapter requires the disclosure of the results of a test undertaken pursuant to Section 12804.8 of the Vehicle Code.

6254.2. (a) Nothing in this chapter exempts from public disclosure the same categories of pesticide safety and efficacy information that are disclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Sec. 136h(d)(1)), if the individual requesting the information is not an officer, employee, or agent specified in subdivision (h) and signs the affirmation specified in subdivision (h).

(b) The Director of Pesticide Regulation, upon his or her initiative, or upon receipt of a request pursuant to this chapter for the release of data submitted and designated as a trade secret by a registrant or applicant, shall determine whether any or all of the data so submitted is a properly designated trade secret. In order to assure that the interested public has an opportunity to obtain and review pesticide safety and efficacy data and to comment prior to the expiration of the public comment period on a proposed pesticide registration, the director shall provide notice to interested persons when an application for registration enters the registration evaluation process.

(c) If the director determines that the data is not a trade secret, the director shall notify the registrant or applicant by certified mail.

(d) The registrant or applicant shall have 30 days after receipt of this notification to provide the director with a complete justification and statement of the grounds on which the trade secret privilege is claimed. This justification and statement shall be submitted by certified mail.

(e) The director shall determine whether the data is protected as a trade secret within 15 days after receipt of the justification and statement or, if no justification and statement is filed, within 45 days of the original notice. The director shall notify the registrant or applicant and any party who has requested the data pursuant to this chapter of that determination by certified mail. If the director determines that the data is not protected as a trade secret, the final notice shall also specify a date, not sooner than 15 days after the date of mailing of the final notice, when the data shall be available to any person requesting information pursuant to subdivision (a).

(f) "Trade secret" means data that is nondisclosable under paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act.

(g) This section shall be operative only so long as, and to the extent that, enforcement of paragraph (1) of subsection (d) of Section 10 of the federal Insecticide, Fungicide, and Rodenticide Act has not been enjoined by federal court order, and shall become inoperative if an

unappealable federal court judgment or decision becomes final that holds that paragraph invalid, to the extent of the invalidity.

(h) The director shall not knowingly disclose information submitted to the state by an applicant or registrant pursuant to Article 4 (commencing with Section 12811) of Chapter 2 of Division 7 of the Food and Agricultural Code to any officer, employee, or agent of any business or other entity engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to any other person who intends to deliver this information to any foreign or multi-national business or entity, unless the applicant or registrant consents to the disclosure. To implement this subdivision, the director shall require the following affirmation to be signed by the person who requests such information:

AFFIRMATION OF STATUS

This affirmation is required by Section 6254.2 of the Government Code.

I have requested access to information submitted to the Department of Pesticide Regulation (or previously submitted to the Department of Food and Agriculture) by a pesticide applicant or registrant pursuant to the California Food and Agricultural Code. I hereby affirm all of the following statements:

(1) I do not seek access to the information for purposes of delivering it or offering it for sale to any business or other entity, including the business or entity of which I am an officer, employee, or agent engaged in the production, sale, or distribution of pesticides in countries other than the United States or in countries in addition to the United States, or to the officers, employees, or agents of such a business or entity.

(2) I will not purposefully deliver or negligently cause the data to be delivered to a business or entity specified in paragraph (1) or its officers, employees, or agents.

I am aware that I may be subject to criminal penalties under Section 118 of the Penal Code if I make any statement of material facts knowing that the statement is false or if I willfully conceal any material fact.

Name of Requester	Name of Requester's Organization	

Signature of Requester	Address of Requester	

Date	Request No.	Telephone Number of Requester

Name, Address, and Telephone
Number of Requester's Client,
if the requester has requested
access to the information on
behalf of someone other than
the requester or the requester's
organization listed above.

(i) Notwithstanding any other provision of this section, the director may disclose information submitted by an applicant or registrant to any person in connection with a public proceeding conducted under law or regulation, if the director determines that the information is needed to determine whether a pesticide, or any ingredient of any pesticide, causes unreasonable adverse effects on health or the environment.

(j) The director shall maintain records of the names of persons to whom data is disclosed pursuant to this section and the persons or organizations they represent and shall inform the applicant or registrant of the names and the affiliation of these persons.

(k) Section 118 of the Penal Code applies to any affirmation made pursuant to this section.

(l) Any officer or employee of the state or former officer or employee of the state who, because of this employment or official position, obtains possession of, or has access to, material which is prohibited from disclosure by this section, and who, knowing that disclosure of this material is prohibited by this section, willfully discloses the material in any manner to any person not entitled to receive it, shall, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000), or by imprisonment in the county jail for not more than one year, or by both fine and imprisonment.

For purposes of this subdivision, any contractor with the state who is furnished information pursuant to this section, or any employee of any contractor, shall be considered an employee of the state.

(m) This section does not prohibit any person from maintaining a civil action for wrongful disclosure of trade secrets.

(n) The director may limit an individual to one request per month pursuant to this section if the director determines that a person has made a frivolous request within the past 12-month period.

6254.20. Nothing in this chapter shall be construed to require the disclosure of records that relate to electronically collected personal information, as defined by Section 11015.5, received, collected, or compiled by a state agency.

6254.21. (a) No state or local agency shall post the home address or telephone number of any elected or appointed official on the Internet without first obtaining the written permission of that individual.

(b) No person shall knowingly post the home address or telephone number of any elected or appointed official, or of the official's residing spouse or child on the Internet knowing that person is an elected or appointed official and intending to cause imminent great bodily harm that is likely to occur or threatening to cause imminent great bodily harm to that individual. A violation of this subdivision is a misdemeanor. A violation of this subdivision that leads to the bodily injury of the official, or his or her residing spouse or child, is a misdemeanor or a felony.

(c) For purposes of this section "elected or appointed official" includes, but is not limited to, all of the following:

- (1) State constitutional officers.
- (2) Members of the Legislature.
- (3) Judges and court commissioners.
- (4) District attorneys.
- (5) Public defenders.
- (6) Members of a city council.
- (7) Members of a board of supervisors.
- (8) Appointees of the Governor.
- (9) Appointees of the Legislature.
- (10) Mayors.
- (11) City attorneys.
- (12) Police chiefs and sheriffs.
- (13) A public safety official as defined in Section 6254.24.

(d) Nothing in this section is intended to preclude punishment instead under Sections 69, 76, or 422 of the Penal Code, or any other provision of law.

6254.9. (a) Computer software developed by a state or local agency is not itself a public record under this chapter. The agency may sell, lease, or license the software for commercial or noncommercial use.

(b) As used in this section, "computer software" includes computer mapping systems, computer programs, and computer graphics systems.

(c) This section shall not be construed to create an implied warranty on the part of the State of California or any local agency for errors, omissions, or other defects in any computer software as provided pursuant to this section.

(d) Nothing in this section is intended to affect the public record status of information merely because it is stored in a computer. Public records stored in a computer shall be disclosed as required by this chapter.

(e) Nothing in this section is intended to limit any copyright protections.

6275. It is the intent of the Legislature to assist members of the public and state and local agencies in identifying exemptions to the California Public Records Act. It is the intent of the Legislature that, after January 1, 1999, each addition or amendment to a statute that exempts any information contained in a public record from disclosure pursuant to subdivision (k) of Section 6254 shall be listed and described in this article. The statutes listed in this article may operate to exempt certain records, or portions thereof, from disclosure. The statutes listed and described may not be inclusive of all exemptions. The listing of a statute in this article does not itself create an exemption. Requesters of public records and public agencies are cautioned to review the applicable statute to determine the extent to which the statute, in light of the circumstances surrounding the request, exempts public records from disclosure.

6276. Records or information not required to be disclosed pursuant to subdivision (k) of Section 6254 may include, but shall not be limited to, records or information identified in statutes listed in this article.

6276.02. Accident Reports, Admissibility as Evidence, Section 315, Public Utilities Code.

Acquired Immune Deficiency Syndrome, blood test results, written authorization not necessary for disclosure, Section 121010, Health and Safety Code.

Acquired Immune Deficiency Syndrome, blood test subject, compelling identity of, Section 120975, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of personal data of patients in State Department of Health Services programs, Section 120820, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of research records, Sections 121090, 121095, 121115, and 121120, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of vaccine volunteers, Section 121280, Health and Safety Code.

Acquired Immune Deficiency Syndrome, confidentiality of information obtained in prevention programs at correctional facilities and law enforcement agencies, Sections 7552 and 7554, Penal Code.

Acquired Immune Deficiency Syndrome, confidentiality of test results of person convicted of prostitution, Section 1202.6, Penal Code.

Acquired Immune Deficiency Syndrome, disclosure of results of HIV test, penalties, Section 120980, Health and Safety Code.

Acquired Immune Deficiency Syndrome, personal information, insurers tests, confidentiality of, Section 799, Insurance Code.

Acquired Immune Deficiency Syndrome, public safety and testing disclosure, Sections 121065 and 121070, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, production or discovery of records for use in criminal or civil proceedings against subject prohibited, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Public Health Records Confidentiality Act, personally identifying information confidentiality, Section 121025, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of criminal defendant pursuant to search warrant requested by victim, confidentiality of, Section 1524.1, Penal Code.

Acquired Immune Deficiency Syndrome, test results, disclosure to patient's spouse and others, Section 121015, Health and Safety Code.

Acquired Immune Deficiency Syndrome, test of person under Youth Authority, disclosure of results, Section 1768.9, Welfare and Institutions Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, definitions, Section 121125, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, financial audits or program evaluations, Section 121085, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, violations, Section 121100, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, personally identifying research records not to be disclosed, Section 121075, Health and Safety Code.

Acquired Immune Deficiency Syndrome Research and Confidentiality Act, permittee disclosure, Section 121080, Health and Safety Code.

Administrative procedure, adjudicatory hearings, disclosure of ex parte communication to administrative law judge, Section 11430.40, Government Code.

Administrative procedure, adjudicatory hearings, interpreters, Section 11513, Government Code.

Adoption records, confidentiality of, Section 102730, Health and Safety Code.

6276.04. Aeronautics Act, reports of investigations and hearings, Section 21693, Public Utilities Code.

Agricultural producers marketing, access to records, Section 59616, Food and Agricultural Code.

Aiding disabled voters, Section 14282, Elections Code. Air pollution data, confidentiality of trade secrets, Section 6254.7, Government Code, and Sections 42303.2 and 43206, Health and Safety Code.

Air toxics emissions inventory plans, protection of trade secrets, Section 44346, Health and Safety Code.

Alcohol and drug abuse records and records of communicable diseases, confidentiality of, Section 123125, Health and Safety Code.

Apiary registration information, confidentiality of, Section 29041, Food and Agricultural Code.

Arrest not resulting in conviction, disclosure or use of records, Sections 432.7 and 432.8, Labor Code.

Arsonists, registered, confidentiality of certain information, Section 457.1, Penal Code.

Artificial insemination, donor not natural father, confidentiality of records, Section 7613, Family Code.

Assessor's records, confidentiality of information in, Section 408, Revenue and Taxation Code.

Assessor's records, confidentiality of information in, Section 451, Revenue and Taxation Code.

Assessor's records, display of documents relating to business affairs or property of another, Section 408.2, Revenue and Taxation Code.

Assigned risk plans, rejected applicants, confidentiality of information, Section 11624, Insurance Code.

Attorney applicant, investigation by State Bar, confidentiality of, Section 6060.2, Business and Professions Code.

Attorney-client confidential communication, Section 6068, Business and Professions Code and Sections 952, 954, 956, 956.5, 957, 958, 959, 960, 961, and 962, Evidence Code.

Attorney, disciplinary proceedings, confidentiality prior to formal proceedings, Section 6086.1, Business and Professions Code.

Attorney, disciplinary proceeding, State Bar access to nonpublic court records, Section 6090.6, Business and Professions Code.

Attorney, investigation by State Bar, confidentiality of, Section 6168, Business and Professions Code.

Attorney, law corporation, investigation by State Bar, confidentiality of, Section 6168, Business and Professions Code.

Attorney, State Bar survey information, confidentiality of, Section 6033, Business and Professions Code.

Attorney work product confidentiality in administrative adjudication, Section 11507.6, Government Code.

Attorney, work product, confidentiality of, Section 6202, Business and Professions Code.

Attorney work product, discovery, Section 2018, Code of Civil Procedure.

Auditor General, access to records for audit purposes, Sections 10527 and 10527.1, Government Code.

Auditor General, disclosure of audit records, Section 10525, Government Code.

Automobile Insurance Claims Depository, confidentiality of information, Section 1876.3, Insurance Code.

Automobile insurance, investigation of fraudulent claims, confidential information, Section 1872.8, Insurance Code.

Automotive repair facility, fact of certification or decertification, Section 9889.47, Business and Professions Code.

Automotive repair facility, notice of intent to seek certification, Section 9889.33, Business and Professions Code.

Avocado handler transaction records, confidentiality of, Sections 44982 and 44984, Food and Agricultural Code.

6276.06. Bank and Corporation Tax, disclosure of information, Article 2 (commencing with Section 19542), Chapter 7, Part 10.2, Division 2, Revenue and Taxation Code.

Bank employees, confidentiality of criminal history information, Sections 777.5 and 4990, Financial Code.

Bank reports, confidentiality of, Section 1939, Financial Code.

Basic Property Insurance Inspection and Placement Plan, confidential reports, Section 10097, Insurance Code.

Beef Council of California, confidentiality of fee transactions information, Section 64691.1, Food and Agricultural Code.

Bids, confidentiality of, Section 10304, Public Contract Code.

Birth, death, and marriage licenses, confidential information contained in, Sections 102100 and 102110, Health and Safety Code.

Birth defects, monitoring, confidentiality of information collected, Section 103850, Health and Safety Code.

Birth, live, confidential portion of certificate, Sections 102430, 102475, 103525, and 103590, Health and Safety Code.

Blood tests, confidentiality of hepatitis and AIDS carriers, Section 1603.1, Health and Safety Code.

Blood-alcohol percentage test results, vehicular offenses, confidentiality of, Section 1804, Vehicle Code.

Bureau of Fraudulent Claims, investigations or publication of information, Section 12991, Insurance Code.

Business and professions licensee exemption for social security number, Section 30, Business and Professions Code.

6276.08. Cable television subscriber information, confidentiality of, Section 637.5, Penal Code.

California AIDS Program, personal data, confidentiality, Section 120820, Health and Safety Code.

California Apple Commission, confidentiality of lists of persons, Section 75598, Food and Agricultural Code.

California Apple Commission, confidentiality of proprietary information from producers or handlers, Section 75633, Food and Agricultural Code.

California Asparagus Commission, confidentiality of lists of producers, Section 78262, Food and Agricultural Code.

California Asparagus Commission, confidentiality of proprietary information from producers, Section 78288, Food and Agricultural Code.

California Avocado Commission, confidentiality of information from handlers, Section 67094, Food and Agricultural Code.

California Avocado Commission, confidentiality of proprietary information from handlers, Section 67104, Food and Agricultural Code.

California Cherry Commission, confidentiality of proprietary information from producers, processors, shippers, or grower-handlers, Section 76144, Food and Agricultural Code.

California Cut Flower Commission, confidentiality of lists of producers, Section 77963, Food and Agricultural Code.

California Cut Flower Commission, confidentiality of proprietary information from producers, Section 77988, Food and Agricultural Code.

California Date Commission, confidentiality of proprietary information from producers and grower-handlers, Section 77843, Food and Agricultural Code.

California Egg Commission, confidentiality of proprietary information from handlers or distributors, Section 75134, Food and Agricultural Code.

California Forest Products Commission, confidentiality of lists of persons, Section 77589, Food and Agricultural Code.

California Forest Products Commission, confidentiality of proprietary information from producers, Section 77624, Food and Agricultural Code.

California Iceberg Lettuce Commission, confidentiality of information from handlers, Section 66624, Food and Agricultural Code.

California Kiwifruit Commission, confidentiality of proprietary information from producers or handlers, Section 68104, Food and Agricultural Code.

California Navel Orange Commission, confidentiality of proprietary information from producers or handlers and lists of producers and handlers, Section 73257, Food and Agricultural Code.

California Pepper Commission, confidentiality of lists of producers and handlers, Section 77298, Food and Agricultural Code.

California Pepper Commission, confidentiality of proprietary information from producers or handlers, Section 77334, Food and Agricultural Code.

California Pistachio Commission, confidentiality of proprietary information from producers or processors, Section 69045, Food and Agricultural Code.

California Salmon Commission, confidentiality of fee transactions records, Section 76901.5, Food and Agricultural Code.

California Salmon Commission, confidentiality of request for list of commercial salmon vessel operators, Section 76950, Food and Agricultural Code.

California Seafood Council, confidentiality of fee transaction records, Section 78553, Food and Agricultural Code.

California Seafood Council, confidentiality of information on volume of fish landed, Section 78575, Food and Agricultural Code.

California Sheep Commission, confidentiality of proprietary information from producers or handlers and lists of producers, Section 76343, Food and Agricultural Code.

California State University contract law, bids, questionnaires and financial statements, Section 10763, Public Contract Code.

California Table Grape Commission, confidentiality of information from shippers, Section 65603, Food and Agricultural Code.

California Tomato Commission, confidentiality of lists of producers, handlers, and others, Section 78679, Food and Agricultural Code.

California Tomato Commission, confidentiality of proprietary information, Section 78704, Food and Agricultural Code.

California Walnut Commission, confidentiality of lists of producers, Section 77101, Food and Agricultural Code.

California Walnut Commission, confidentiality of proprietary information from producers or handlers, Section 77154, Food and Agricultural Code.

California Wheat Commission, confidentiality of proprietary information from handlers and lists of producers, Section 72104, Food and Agricultural Code.

California Wheat Commission, confidentiality of requests for assessment refund, Section 72109, Food and Agricultural Code.

California Wine Commission, confidentiality of proprietary information from producers or vintners, Section 74655, Food and Agricultural Code.

California Wine Grape Commission, confidentiality of proprietary information from producers and vintners, Section 74955, Food and Agricultural Code.

6276.10. Cancer registries, confidentiality of information, Section 103885, Health and Safety Code.

Candidate for local nonpartisan elective office, confidentiality of ballot statement, Section 13311, Elections Code.

Charter-Party Carriers, unauthorized disclosures by commission, Section 5412.5, Public Utilities Code.

Child abuse information, exchange by multidisciplinary personnel teams, Section 830, Welfare and Institutions Code.

Child abuse information reported to Department of Justice, confidentiality of, Sections 11107.5 and 11169, Penal Code.

Child abuse report and those making report, confidentiality of, Sections 11167, 11167.5, and 11174.3, Penal Code.

Child care liability insurance, confidentiality of information, Section 1864, Insurance Code.

Child concealer, confidentiality of address, Section 277, Penal Code.

Child custody investigation report, confidentiality of, Section 3111, Family Code.

Child day care facility, nondisclosure of complaint, Section 1596.853, Health and Safety Code.

Child health and disability prevention, confidentiality of health screening and evaluation results, Section 124110, Health and Safety Code.

Child support, confidentiality of income tax return, Section 3552, Family Code.

Child support, promise to pay, confidentiality of, Section 7614, Family Code.

Childhood lead poisoning prevention, confidentiality of blood lead findings, Section 124130, Health and Safety Code.

Children and families commission, local, confidentiality of individually identifiable information, Section 130140.1, Health and Safety Code.

Cigarette tax, confidential information, Section 30455, Revenue and Taxation Code.

Civil actions, delayed disclosure for 30 days after complaint filed, Section 482.050, Code of Civil Procedure.

Closed sessions, meetings of local governments, pending litigation, Section 54956.9, Government Code.

Closed sessions, multijurisdictional drug enforcement agencies, Section 54957.8, Government Code.

Colorado River Board, confidential information and records, Section 12519, Water Code.

Commercial fishing licensee, confidentiality of records, Section 7923, Fish and Game Code.

Commercial fishing reports, Section 8022, Fish and Game Code.

Community care facilities, confidentiality of client information, Section 1557.5, Health and Safety Code.

Community college employee, candidate examination records, confidentiality of, Section 88093, Education Code.

Community college employee, notice and reasons for nonreemployment, confidentiality, Section 87740, Education Code.

6276.12. Conservatee, confidentiality of the conservatee's report, Section 1826, Probate Code.

Conservatee, estate plan of, confidentiality of, Section 2586, Probate Code.

Conservatee with disability, confidentiality of report, Section 1827.5, Probate Code.

Conservator, confidentiality of conservator's birthdate and driver's license number, Section 1834, Probate Code.

Conservator, supplemental information, confidentiality of, Section 1821, Probate Code.

Conservatorship, court review of, confidentiality of report, Section 1851, Probate Code.

Consumer credit report information prohibited from being furnished for employment purposes, Section 1785.18, Civil Code.

Consumer fraud investigations, access to complaints and investigations, Section 26509, Government Code.

Consumption or utilization of mineral materials, disclosure of, Section 2207.1, Public Resources Code.

Contractor, evaluations and contractor responses, confidentiality of, Section 10370, Public Contract Code.

Contractor, license applicants, evidence of financial solvency, confidentiality of, Section 7067.5, Business and Professions Code.

Controlled Substance Law violations, confidential information, Section 818.7, Government Code.

Controlled substance offenders, confidentiality of registration information, Section 11594, Health and Safety Code.

Cooperative Marketing Association, confidential information disclosed to conciliator, Sections 54453 and 54457, Food and Agricultural Code.

Coroner, inquests, subpoena duces tecum, Sections 27491.8 and 27498, Government Code.

Corporations, commissioner, publication of information filed with commissioner, Section 25605, Corporations Code.

County alcohol programs, confidential information and records, Section 11812, Health and Safety Code.

County Employees' Retirement, confidential statements and records, Section 31532, Government Code.

County mental health system, confidentiality of client information, Section 5610, Welfare and Institutions Code.

County social services, investigation of applicant, confidentiality, Section 18491, Welfare and Institutions Code.

County social services rendered by volunteers, confidentiality of records of recipients, Section 10810, Welfare and Institutions Code.

Court files, access to, restricted for 60 days, Section 1161.2, Code of Civil Procedure.

Court reporters, confidentiality of records and reporters, Section 68525, Government Code.

Court-appointed special advocates, confidentiality of information acquired or reviewed, Section 105, Welfare and Institutions Code.

Crane employers, previous business identities, confidentiality of, Section 7383, Labor Code.

Credit unions, confidentiality of investigation and examination reports, Section 14257, Financial Code.

Credit unions, confidentiality of employee criminal history information, Section 14409.2, Financial Code.

Credit unions, confidentiality of financial reports, Section 16120, Financial Code.

Criminal defendant, indigent, confidentiality of request for funds for investigators and experts, Section 987.9, Penal Code.

Criminal felon placed in diagnostic facility, confidentiality of report of diagnosis and recommendation, Sections 1203.3 and 1543, Penal Code.

Criminal offender record information, access to, Sections 11076, 11077, 11081, 13201, and 13202, Penal Code.

Criminal records information, disclosure by vendor, Section 11149.4, Penal Code.

Criminal statistics, confidentiality of information, Section 13013, Penal Code.

Crop reports, confidential, subdivision (e), Section 6254, Government Code.

Customer list of employment agency, trade secret, Section 16607, Business and Professions Code.

Customer list of telephone answering service, trade secret, Section 16606, Business and Professions Code.

6276.14. Dairy Council of California, confidentiality of ballots, Section 64155, Food and Agricultural Code.

Data processing systems contracts with state agencies, confidentiality of information, Section 11772, Government Code.

Death, report that physician's or podiatrist's negligence or incompetence may be cause, confidentiality of, Section 802.5, Business and Professions Code.

Dentist advertising and referral contract exemption, Section 650.2, Business and Professions Code.

Dentist, alcohol or dangerous drug rehabilitation and diversion, confidentiality of records, Section 1698, Business and Professions Code.

Department of Consumer Affairs licensee exemption for alcohol or dangerous drug treatment and rehabilitation records, Section 156.1, Business and Professions Code.

Developmentally disabled conservatee confidentiality of reports and records, Sections 416.8 and 416.18, Health and Safety Code.

Developmentally disabled or mentally disordered person as victim of crime, information in report filed with law enforcement agency, Section 5004.5, Welfare and Institutions Code.

Developmentally disabled person, access to information provided by family member, Section 4727, Welfare and Institutions Code.

Developmentally disabled person and person with mental illness, access to and release of information about, by protection and advocacy agency, Section 4903, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of patient records, state agencies, Section 4553, Welfare and Institutions Code.

Developmentally disabled person, confidentiality of records and information, Sections 4514 and 4518, Welfare and Institutions Code.

Diesel Fuel Tax information, disclosure prohibited, Section 60609, Revenue and Taxation Code.

Disability compensation, confidential medical records, Section 2714, Unemployment Insurance Code.

Disability insurance, access to registered information, Section 789.7, Insurance Code.

Discrimination complaint to Division of Labor Standards Enforcement, confidentiality of witnesses, Section 98.7, Labor Code.

Dispute resolution participants confidentiality, Section 471.5, Business and Professions Code.

District Agricultural Association Board, records, public inspection, Section 3968, Food and Agricultural Code.

Domestic violence counselor and victim, confidentiality of communication, Sections 1037.2 and 1037.5, Evidence Code.

Driver arrested for traffic violation, notice of reexamination for evidence of incapacity, confidentiality of, Section 40313, Vehicle Code.

Driver's license file information, sale or inspection, Section 1810, Vehicle Code.

Driving school and driving instructor licensee records, confidentiality of, Section 11108, Vehicle Code.

6276.16. Educational psychologist-patient, privileged communication, Section 1010.5, Evidence Code.

Electronic and appliance repair dealer, service contractor, financial data in applications, subdivision (x), Section 6254, Government Code.

Electronic data processing, data security and confidentiality, Sections 11771 and 11772, Government Code.

Emergency Medical Services Fund, patient named, Section 1797.98c, Health and Safety Code.

Eminent domain proceedings, use of state tax returns, Section 1263.520, Code of Civil Procedure.

Employee personnel file, confidential preemployment information, Section 1198.5, Labor Code.

Employment agency, confidentiality of customer list, Section 16607, Business and Professions Code.

Employment application, nondisclosure of arrest record or certain convictions, Sections 432.7 and 432.8, Labor Code.

Employment Development Department, furnishing materials, Section 307, Unemployment Insurance Code.

Equal wage rate violation, confidentiality of complaint, Section 1197.5, Labor Code.

Equalization, State Board of, prohibition against divulging information, Section 15619, Government Code.

Escrow Agents' Fidelity Corporation, confidentiality of examination and investigation reports, Section 17336, Financial Code.

Escrow agents' confidentiality of reports on violations, Section 17414, Financial Code.

Escrow agents' confidentiality of state summary criminal history information, Section 17414.1, Financial Code.

Estate tax, confidential records and information, Sections 14251 and 14252, Revenue and Taxation Code.

Excessive rates or complaints, reports, Section 1857.9, Insurance Code.

Executive Department, closed sessions and the record of topics discussed, Sections 11126 and 11126.1, Government Code.

Executive Department, investigations and hearings, confidential nature of information acquired, Section 11183, Government Code.

6276.18. Family counselor and client, confidential information, Section 4982, Business and Professions Code.

Family Court, records, Section 1818, Family Law Code.

Farm product processor license, confidentiality of financial statements, Section 55523.6, Food and Agricultural Code.

Farm product processor licensee, confidentiality of grape purchases, Section 55601.5, Food and Agricultural Code.

Fee payer information, prohibition against disclosure by Board of Equalization and others, Section 55381, Revenue and Taxation Code.

Financial institutions, issuance of securities, reports and records of state agencies, subdivision (d), Section 6254, Government Code.

Financial records, confidentiality of, Sections 7470, 7471, and 7473, Government Code.

Financial statements of insurers, confidentiality of information received, Section 925.3, Insurance Code.

Financial statements and questionnaires, of prospective bidders for the state, confidentiality of, Section 10165, Public Contract Code.

Financial statements and questionnaires, of prospective bidders for California State University contracts, confidentiality of, Section 10763, Public Contract Code.

Firearm license applications, subdivision (u), Section 6254, Government Code.

Firearm sale or transfer, confidentiality of records, Section 12082, Penal Code.

Firefighters Service Award, confidentiality of data filed with the Board of Administration of the Public Employees' Retirement System, Section 50955, Government Code.

Fish and wildlife law enforcement agreements with other states, confidentiality of information, Section 391, Fish and Game Code.

Fish and wildlife taken illegally, public record status of records of case, Section 2584, Fish and Game Code.

Food stamps, disclosure of information, Section 18909, Welfare and Institutions Code.

Foreign marketing of agricultural products, confidentiality of financial information, Section 58577, Food and Agricultural Code.

Forest fires, anonymity of informants, Section 4417, Public Resources Code.

Foster homes, identifying information, Section 1536, Health and Safety Code.

Franchise Tax Board, access to Franchise Tax Board information by the State Department of Social Services, Section 11025, Welfare and Institutions Code.

Franchise Tax Board, auditing, confidentiality of, Section 90005, Government Code.
Franchises, applications, and reports filed with Commissioner of Corporations, disclosure and withholding from public inspection, Section 31504, Corporations Code.
Fur dealer licensee, confidentiality of records, Section 4041, Fish and Game Code.

6276.22. Genetic test results in medical record of applicant or enrollee of specified insurance plans, Sections 10123.35 and 10140.1, Insurance Code.

Governor, correspondence of and to Governor and Governor's office, subdivision (l), Section 6254, Government Code.

Governor, transfer of public records in control of, restrictions on public access, Section 6268, Government Code.

Grand juror, disclosure of information or indictment, Section 924, Penal Code.

Grand jury, confidentiality of request for special counsel, Section 936.7, Penal Code.

Grand jury, confidentiality of transcription of indictment or accusation, Section 938.1, Penal Code.

Group Insurance, Public Employees, Section 53202.25, Government Code.

Guardian, confidentiality of report used to check ability, Section 2342, Probate Code.

Guardianship, confidentiality of report regarding the suitability of the proposed guardian, Section 1543, Probate Code.

Guardianship, disclosure of report and recommendation concerning proposed guardianship of person or estate, Section 1513, Probate Code.

6276.24. Harmful matter, distribution, confidentiality of certain recipients, Section 313.1, Penal Code.

Hazardous substance tax information, prohibition against disclosure, Section 43651, Revenue and Taxation Code.

Hazardous waste control, business plans, public inspection, Section 25506, Health and Safety Code.

Hazardous waste control, notice of unlawful hazardous waste disposal, Section 25180.5, Health and Safety Code.

Hazardous waste control, trade secrets, disclosure of information, Sections 25511 and 25538, Health and Safety Code.

Hazardous waste control, trade secrets, procedures for release of information, Section 25358.2, Health and Safety Code.

Hazardous waste generator report, protection of trade secrets, Sections 25244.21 and 25244.23, Health and Safety Code.

Hazardous waste licenseholder disclosure statement, confidentiality of, Section 25186.5, Health and Safety Code.

Hazardous waste management facilities on Indian lands, confidentiality of privileged or trade secret information, Section 25198.4, Health and Safety Code.

Hazardous waste recycling, duties of department, Section 25170, Health and Safety Code.

Hazardous waste recycling, list of specified hazardous wastes, trade secrets, Section 25175, Health and Safety Code.

Hazardous waste recycling, trade secrets, confidential nature, Sections 25173 and 25180.5, Health and Safety Code.

Healing arts licensees, central files, confidentiality, Section 800, Business and Professions Code.

Health authorities, special county, protection of trade secrets, Sections 14087.35, 14087.36, and 14087.38, Welfare and Institutions Code.

Health Care Provider Central Files, confidentiality of, Section 800, Business and Professions Code.

Health care provider disciplinary proceeding, confidentiality of documents, Section 805.1, Business and Professions Code.

Health care service plans, review of quality of care, privileged communications, Sections 1370 and 1380, Health and Safety Code.

Health commissions, special county, protection of trade secrets, Section 14087.31, Welfare and Institutions Code.

Health facilities, patient's rights of confidentiality, Sections 128735, 128755, and 128765, Health and Safety Code.

Health facility and clinic, consolidated data and reports, confidentiality of, Section 128730, Health and Safety Code.

Health personnel, data collection by the Office of Statewide Health Planning and Development, confidentiality of information on individual licentiates, Sections 127775 and 127780, Health and Safety Code.

Health planning and development pilot projects, confidentiality of data collected, Section 128165, Health and Safety Code.

Hereditary Disorders Act, legislative finding and declaration, confidential information, Sections 124975 and 124980, Health and Safety Code.

Hereditary Disorders Act, rules, regulations, and standards, breach of confidentiality, Section 124980, Health and Safety Code.

Higher Education Employee-Employer Relations, findings of fact and recommended terms of settlement, Section 3593, Government Code.

Higher Education Employee-Employer Relations, access by Public Employment Relations Board to employer's or employee organization's records, Section 3563, Government Code.

HIV, disclosures to blood banks by department or county health officers, Section 1603.1, Health and Safety Code.

Home address of public employees and officers in Department of Motor Vehicles, records, confidentiality of, Sections 1808.2 and 1808.4, Vehicle Code.

Horse racing, horses, blood or urine test sample, confidentiality, Section 19577, Business and Professions Code.

Hospital district and municipal hospital records relating to contracts with insurers and service plans, subdivision (t), Section 6254, Government Code.

Hospital final accreditation report, subdivision (s), Section 6254, Government Code.

Housing authorities, confidentiality of rosters of tenants, Section 34283, Health and Safety Code.

Housing authorities, confidentiality of applications by prospective or current tenants, Section 34332, Health and Safety Code.

6276.26. Improper obtaining or distributing of information from Department of Motor Vehicles, Sections 1808.46 and 1808.47, Vehicle Code.

Improper governmental activities reporting, confidentiality of identity of person providing information, Section 8547.5, Government Code.

Improper governmental activities reporting, disclosure of information, Section 8547.6, Government Code.

Industrial accident reports, confidentiality of information, Section 129, Labor Code.

Industrial loan companies, confidentiality of financial information, Section 18496, Financial Code.

Industrial loan companies, confidentiality of investigation and examination reports, Section 18394, Financial Code.

In forma pauperis litigant, rules governing confidentiality of financial information, Section 68511.3, Government Code.

Initiative, referendum, recall, and other petitions, confidentiality of names of signers, Section 6253.5, Government Code.

Inspector General, Youth and Adult Correctional Agency, confidentiality of records of employee interviews, Section 6127, Penal Code.

Insurance claims analysis, confidentiality of information, Section 1875.16, Insurance Code.

Insurance Commissioner, confidential information, Sections 735.5, 1077.3, and 12919, Insurance Code.

Insurance Commissioner, informal conciliation of complaints, confidential communications, Section 1858.02, Insurance Code.

Insurance Commissioner, information from examination or investigation, confidentiality of, Sections 1215.7, 1433, and 1759.3, Insurance Code.

Insurance Commissioner, report to Legislature, confidential information, Section 12961, Insurance Code.

Insurance Commissioner, writings filed with nondisclosure, Section 855, Insurance Code.

Insurance fraud reporting, information acquired not part of public record, Section 1873.1, Insurance Code.

Insurance Holding Company System Regulatory Act, examinations, Section 1215.7, Insurance Code.

Insurance licensee, confidential information, Section 1666.5, Insurance Code.

Insurer application information, confidentiality of, Section 925.3, Insurance Code.

Insurer financial analysis ratios and examination synopses, confidentiality of, Section 933, Insurance Code.

Insurer, request for examination of, confidentiality of, Section 1067.11, Insurance Code.

Integrated Waste Management Board information, prohibition against disclosure, Section 45982, Revenue and Taxation Code.

Intervention in regulatory and ratemaking proceedings, audit of customer seeking and award, Section 1804, Public Utilities Code.

Investigative consumer reporting agency, limitations on furnishing an investigative consumer report, Section 1786.12, Civil Code.

6276.28. Joint Legislative Ethics Committee, confidentiality of reports and records, Section 8953, Government Code.

Judicial candidates, confidentiality of communications concerning, Section 12011.5, Government Code.

Jurors' lists, lists of registered voters and licensed drivers as source for, Section 197, Code of Civil Procedure.

Juvenile court proceedings to adjudge a person a dependent child of court, sealing records of, Section 389, Welfare and Institutions Code.

Juvenile criminal records, dissemination to schools, Section 828.1, Welfare and Institutions Code.

Juvenile delinquents, notification of chief of police or sheriff of escape of minor from secure detention facility, Section 1155, Welfare and Institutions Code.

Labor dispute, investigation and mediation records, confidentiality of, Section 65, Labor Code.

Lanterman-Petris-Short Act, mental health services recipients, confidentiality of information and records, mental health advocate, Sections 5540, 5541, 5542, and 5550, Welfare and Institutions Code.

Law enforcement vehicles, registration disclosure, Section 5003, Vehicle Code.

Legislative Counsel records, subdivision (m), Section 6254, Government Code.

Library circulation records and other materials, subdivision (i), Section 6254 and Section 6267, Government Code.

Life and disability insurers, actuarial information, confidentiality of, Section 10489.15, Insurance Code.

Litigation, confidentiality of settlement information, Section 68513, Government Code.

Local agency legislative body, closed sessions, disclosure of materials, Section 54956.9, Government Code.

Local government employees, confidentiality of records and claims relating to group insurance, Section 53202.25, Government Code.

Local summary criminal history information, confidentiality of, Sections 13300 and 13305, Penal Code.

Local agency legislative body, closed session, nondisclosure of minute book, Section 54957.2, Government Code.

Local agency legislative body, meeting, disclosure of agenda, Section 54957.5, Government Code.

Long-term health facilities, confidentiality of complaints against, Section 1419, Health and Safety Code.

Long-term health facilities, confidentiality of records retained by State Department of Health Services, Section 1439, Health and Safety Code.

6276.30. Major Risk Medical Insurance Program, negotiations with health plans, subdivisions (v) and (w) of Section 6254, Government Code.

Mandated blood testing and confidentiality to protect public health, prohibition against compelling identification of test subjects, Section 120975, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, unauthorized disclosures of identification of test subjects, Section 120980, Health and Safety Code.

Mandated blood testing and confidentiality to protect public health, disclosure to patient's spouse, sexual partner, needle sharer, or county health officer, Section 121015, Health and Safety Code.

Manufactured home, mobilehome, floating home, confidentiality of home address of registered owner, Section 18081, Health and Safety Code.

Marital confidential communications, Sections 980, 981, 982, 983, 984, 985, 986, and 987, Evidence Code.

Market reports, confidential, subdivision (e), Section 6254, Government Code.

Marketing of commodities, confidentiality of financial information, Section 58781, Food and Agricultural Code.

Marketing orders, confidentiality of processors or distributors' information, Section 59202, Food and Agricultural Code.

Marriage, confidential, certificate, Section 511, Family Code.

Medi-Cal Benefits Program, confidentiality of information, Section 14100.2, Welfare and Institutions Code.

Medi-Cal Benefits Program, Evaluation Committee, confidentiality of information, Section 14132.6, Welfare and Institutions Code.

Medi-Cal Benefits Program, Request of Department for Records of Information, Section 14124.89, Welfare and Institutions Code.

Medi-Cal Fraud Bureau, confidentiality of complaints, Section 12528, Government Code.

Medical information, disclosure by provider unless prohibited by patient in writing, Section 56.16, Civil Code.

Medical information, types of information not subject to patient prohibition of disclosure, Section 56.30, Civil Code.

Medical and other hospital committees and peer review bodies, confidentiality of records, Section 1157, Evidence Code.

Medical or dental licensee, action for revocation or suspension due to illness, report, confidentiality of, Section 828, Business and Professions Code.

Medical or dental licensee, disciplinary action, denial or termination of staff privileges, report, confidentiality of, Sections 805, 805.1, and 805.5, Business and Professions Code.

Meetings of state agencies, disclosure of agenda, Section 11125.1, Government Code.

Mental institution patient, notification to peace officers of escape, Section 7325.5, Welfare and Institutions Code.

Mentally abnormal sex offender committed to state hospital, confidentiality of records, Section 4135, Welfare and Institutions Code.

Mentally disordered and developmentally disabled offenders, access to criminal histories of, Section 1620, Penal Code.

Mentally disordered persons, court-ordered evaluation, confidentiality of reports, Section 5202, Welfare and Institutions Code.

Mentally disordered or mentally ill person, confidentiality of written consent to detainment, Section 5326.4, Welfare and Institutions Code.

Mentally disordered or mentally ill person, voluntarily or involuntarily detained and receiving services, confidentiality of records and information, Sections 5328, 5328.01, 5328.02, 5328.05, 5328.1, 5328.15, 5328.2, 5328.3, 5328.4, 5328.5, 5328.7, 5328.8, 5328.9, and 5330, Welfare and Institutions Code.

Mentally disordered or mentally ill person, weapons restrictions, confidentiality of information about, Section 8103, Welfare and Institutions Code.

Milk marketing, confidentiality of records, Section 61443, Food and Agricultural Code.

Milk product certification, confidentiality of, Section 62121, Food and Agricultural Code.

Milk, market milk, confidential records and reports, Section 62243, Food and Agricultural Code.

Milk product registration, confidentiality of information, Section 38946, Food and Agricultural Code.

Milk equalization pool plan, confidentiality of producers' voting, Section 62716, Food and Agricultural Code.

Mining report, confidentiality of report containing information relating to mineral production, reserves, or rate of depletion of mining operation, Section 2207, Public Resources Code.

Minor, criminal proceeding testimony closed to public, Section 859.1, Penal Code.

Minority and women's business data possessed by state agencies, confidentiality of, Section 15339.30, Government Code.

Minors, material depicting sexual conduct, records of suppliers to be kept and made available to law enforcement, Section 1309.5, Labor Code.

Misdemeanor and felony reports by police chiefs and sheriffs to Department of Justice, confidentiality of, Sections 11107 and 11107.5, Penal Code.

Monetary instrument transaction records, confidentiality of, Section 14167, Penal Code.

Missing persons' information, disclosure of, Sections 14201 and 14203, Penal Code.

Morbidity and mortality studies, confidentiality of records, Section 100330, Health and Safety Code.

Motor vehicle accident reports, disclosure, Sections 16005, 20012, and 20014, Vehicle Code.

Motor vehicles, department of, public records, exceptions, Sections 1808 to 1808.7, inclusive, Vehicle Code.

Motor vehicle insurance fraud reporting, confidentiality of information acquired, Section 1874.3, Insurance Code.

Motor vehicle liability insurer, data reported to Department of Insurance, confidentiality of, Section 11628, Insurance Code.

Multijurisdictional drug law enforcement agency, closed sessions to discuss criminal investigation, Section 54957.8, Government Code.

6276.32. Narcotic addict outpatient revocation proceeding, confidentiality of reports, Section 3152.5, Welfare and Institutions Code.

Narcotic and drug abuse patients, confidentiality of records, Section 11977, Health and Safety Code.

Native American graves, cemeteries and sacred places, records of, subdivision (r), Section 6254, Government Code.

Newspaper, radio, or television employee, nondisclosure of source of information, Section 1070, Evidence Code.

Notary public, confidentiality of application for appointment and commission, Section 8201.5, Government Code.

Nurse, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 2770.12, Business and Professions Code.

Obscene matter, defense of scientific or other purpose, confidentiality of recipients, Section 311.8, Penal Code.

Occupational safety and health investigations, confidentiality of complaints and complainants, Section 6309, Labor Code.

Occupational safety and health investigations, confidentiality of trade secrets, Section 6322, Labor Code.

Official information acquired in confidence by public employee, disclosure of, Sections 1040 and 1041, Evidence Code.

Oil and gas, confidentiality of proposals for the drilling of a well, Section 3724.4, Public Resources Code.

Oil and gas, disclosure of onshore and offshore exploratory well records, Section 3234, Public Resources Code.

Oil and gas, disclosure of well records, Section 3752, Public Resources Code.

Oil and gas leases, surveys for permits, confidentiality of information, Section 6826, Public Resources Code.

Oil spill feepayer information, prohibition against disclosure, Section 46751, Revenue and Taxation Code.

Older adults receiving county services, providing information between county agencies, confidentiality of, Section 9401, Welfare and Institutions Code.

Organic food certification organization records, release of, Section 110845, Health and Safety Code, and Section 46009, Food and Agricultural Code.

Osteopathic physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2369, Business and Professions Code.

6276.34. Parole revocation proceedings, confidentiality of information in reports, Section 3063.5, Penal Code.

Passenger fishing boat licenses, records, Section 7923, Fish and Game Code.

Paternity, acknowledgement, confidentiality of records, Section 102760, Health and Safety Code.

Patient-physician confidential communication, Sections 992 and 994, Evidence Code.

Patient records, confidentiality of, Section 123135, Health and Safety Code.

Payment instrument licensee records, inspection of, Section 33206, Financial Code.

Payroll records, confidentiality of, Section 1776, Labor Code.

Peace officer personnel records, confidentiality of, Sections 832.7 and 832.8, Penal Code.

Penitential communication between penitent and clergy, Sections 1032 and 1033, Evidence Code.

Personal Income Tax, disclosure of information, Article 2 (commencing with Section 19542), Chapter 7, Part 10.2, Division 2, Revenue and Taxation Code.

Personal information, information practices act, prohibitions against disclosure by state agencies, Sections 1798.24 and 1798.75, Civil Code.

Personal information, subpoena of records containing, Section 1985.4, Code of Civil Procedure.

Personal representative, confidentiality of personal representative's birth date and driver's license number, Section 8404, Probate Code.

Personnel Administration, Department of, confidentiality of pay data furnished to, Section 19826.5, Government Code.

Petition signatures, Section 18650, Elections Code.

Petroleum supply and pricing, confidential information, Sections 25364 and 25366, Public Resources Code.

Pharmacist, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 4436, Business and Professions Code.

Physical therapist or assistant, records of dangerous drug or alcohol diversion and rehabilitation, confidentiality of, Section 2667, Business and Professions Code.

Physical or mental condition or conviction of controlled substance offense, records in Department of Motor Vehicles, confidentiality of, Section 1808.5, Vehicle Code.

Physician and surgeon, rehabilitation and diversion records, confidentiality of, Section 2355, Business and Professions Code.

Physician assistant, alcohol or dangerous drug diversion and rehabilitation records, confidentiality of, Section 3534.7, Business and Professions Code.

Physician competency examination, confidentiality of reports, Section 2294, Business and Professions Code.

Physicians and surgeons, confidentiality of reports of patients with a lapse of consciousness disorder, Section 103900, Health and Safety Code.

Physician Services Account, confidentiality of patient names in claims, Section 16956, Welfare and Institutions Code.

Podiatrist, alcohol or drug diversion and rehabilitation records, confidentiality of, Section 2497.1, Business and Professions Code.

Pollution Control Financing Authority, financial data submitted to, subdivision (o), Section 6254, Government Code.

Postmortem or autopsy photos, Section 129, Code of Civil Procedure.

6276.36. Pregnancy tests by local public health agencies, confidentiality of, Section 123380, Health and Safety Code.

Pregnant women, confidentiality of blood tests, Section 125105, Health and Safety Code.

Prehospital emergency medical care, release of information, Sections 1797.188 and 1797.189, Health and Safety Code.

Prenatal syphilis tests, confidentiality of, Section 120705, Health and Safety Code.

Presiding Officer, Section 11430.40, Government Code.

Prisoners, behavioral research on, confidential personal information, Section 3515, Penal Code.

Prisoners, confidentiality of blood tests, Section 7530, Penal Code.

Prisoners, medical testing, confidentiality of records, Sections 7517 and 7540, Penal Code.

Prisoners, transfer from county facility for mental treatment and evaluation, confidentiality of written reasons, Section 4011.6, Penal Code.

Private industry wage data collected by public entity, confidentiality of, Section 6254.6, Government Code.

Private railroad car tax, confidentiality of information, Section 11655, Revenue and Taxation Code.

Probate referee, disclosure of materials, Section 8908, Probate Code.

Probation officer reports, inspection of, Section 1203.05, Penal Code.

Produce dealer, confidentiality of financial statements, Section 56254, Food and Agricultural Code.

Products liability insurers, transmission of information, Sections 1857.7 and 1857.9, Insurance Code.

Professional corporations, financial statements, confidentiality of, Section 13406, Corporations Code.

Property on loan to museum, notice of intent to preserve an interest in, not subject to disclosure, Section 1899.5, Civil Code.

Property taxation, confidentiality of change of ownership, Section 481, Revenue and Taxation Code.

Property taxation, confidentiality of property information, Section 15641, Government Code and Section 833, Revenue and Taxation Code.

Proprietary information, availability only to the director and other persons authorized by the operator and the owner, Section 2778, Public Resources Code.

Psychologist and client, confidential relations and communications, Section 2918, Business and Professions Code.

Psychotherapist-patient confidential communication, Sections 1012 and 1014, Evidence Code.

Public employees' home addresses and telephone numbers, confidentiality of, Section 6254.3, Government Code.

Public Employees' Retirement System, confidentiality of data filed by member or beneficiary with board of administration, Section 20134, Government Code.

Public school employees organization, confidentiality of proof of majority support submitted to Public Employment Relations Board, Sections 3544, 3544.1, and 3544.5, Government Code.

Public social services, confidentiality of digest of decisions, Section 10964, Welfare and Institutions Code.

Public social services, confidentiality of information regarding child abuse or elder or dependent persons abuse, Section 10850.1, Welfare and Institutions Code.

Public social services, confidentiality of information regarding eligibility, Section 10850.2, Welfare and Institutions Code.

Public social services, confidentiality of records, Section 10850, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies, Section 10850.3, Welfare and Institutions Code.

Public social services, disclosure of information to law enforcement agencies regarding deceased applicant or recipient, Section 10850.7, Welfare and Institutions Code.

Public utilities, confidentiality of information, Section 583, Public Utilities Code.

Pupil, confidentiality of personal information, Section 45345, Education Code.

Pupil drug and alcohol use questionnaires, confidentiality of, Section 11605, Health and Safety Code.

Pupil, expulsion hearing, disclosure of testimony of witness and closed session of district board, Section 48918, Education Code.

Pupil, personal information disclosed to school counselor, confidentiality of, Section 49602, Education Code.

Pupil record contents, records of administrative hearing to change contents, confidentiality of, Section 49070, Education Code.

Pupil records, access authorized for specified parties, Section 49076, Education Code.

Pupil records, disclosure in hearing to dismiss or suspend school employee, Section 44944.1, Education Code.

Pupil records, release of directory information to private entities, Sections 49073 and 49073.5, Education Code.

6276.38. Radioactive materials, dissemination of information about transportation of, Section 33002, Vehicle Code.

Real estate broker, annual report to Department of Real Estate of financial information, confidentiality of, Section 10232.2, Business and Professions Code.

Real property, acquisition by state or local government, information relating to feasibility, subdivision (h), Section 6254, Government Code.

Real property, change in ownership statement, confidentiality of, Section 27280, Government Code.

Reciprocal agreements with adjoining states, Section 391, Fish and Game Code.

Records of contract purchasers, inspection by public prohibited, Section 85, Military and Veterans Code.

Registered public obligations, inspection of records of security interests in, Section 5060, Government Code.

Registration of exempt vehicles, nondisclosure of name of person involved in alleged violation, Section 5003, Vehicle Code.

Rehabilitation, Department of, confidential information, Section 19016, Welfare and Institutions Code.

Reinsurance intermediary-broker license information, confidentiality of, Section 1781.3, Insurance Code.

Rent control ordinance, confidentiality of information concerning accommodations sought to be withdrawn from, Section 7060.4, Government Code.

Report of probation officer, inspection, copies, Section 1203.05, Penal Code.

Repossession agency licensee application, confidentiality of information, Sections 7503, 7504, and 7506.5, Business and Professions Code.

Residence address in any record of Department of Housing and Community Development, confidentiality of, Section 6254.1, Government Code.

Residence address in any record of Department of Motor Vehicles, confidentiality of, Section 6254.1, Government Code, and Section 1808.21, Vehicle Code.

Residence and mailing addresses in records of Department of Motor Vehicles, confidentiality of, Section 1810.7, Vehicle Code.

Residential care facilities, confidentiality of resident information, Section 1568.08, Health and Safety Code.

Residential care facilities for the elderly, confidentiality of client information, Section 1569.315, Health and Safety Code.

Respiratory care practitioner, professional competency examination reports, confidentiality of, Section 3756, Business and Professions Code.

Restraint of trade, civil action by district attorney, confidential memorandum, Section 16750, Business and Professions Code.

Reward by governor for information leading to arrest and conviction, confidentiality of person supplying information, Section 1547, Penal Code.

6276.40. Sales and use tax, disclosure of information, Section 7056, Revenue and Taxation Code.

Savings association employees, disclosure of criminal history information, Sections 6525 and 8012, Financial Code.

Savings associations, inspection of records by shareholders, Section 6050, Financial Code.

School district governing board, disciplinary action, disclosure of pupil information, Section 35146, Education Code.

School employee, merit system examination records, confidentiality of, Section 45274, Education Code.

School employee, notice and reasons for hearing on nonreemployment of employee, confidentiality of, Sections 44948.5 and 44949, Education Code.

School meals for needy pupils, confidentiality of records, Section 49558, Education Code.

Sealed records, arrest for misdemeanor, Section 851.7, Penal Code.

Sealed records, misdemeanor convictions, Section 1203.45, Penal Code.

Sealing and destruction of arrest records, determination of innocence, Section 851.8, Penal Code.

Search warrants, special master, Section 1524, Penal Code.

Sex change, confidentiality of birth certificate, Section 103440, Health and Safety Code.

Sex offenders, registration form, Section 290, Penal Code.

Sex offenders, specimen and other information, unauthorized disclosure, Section 290.2, Penal Code.

Sexual assault forms, confidentiality of, Section 13823.5, Penal Code.

Sexual assault victim counselor and victim, confidential communication, Sections 1035.2, 1035.4, and 1035.8, Evidence Code.

Shorthand reporter's complaint, Section 8010, Business and Professions Code.

Small business information compiled by state agencies, confidentiality of, Section 15331.2, Government Code.

Small family day care homes, identifying information, Section 1596.86, Health and Safety Code.

Social security number, applicant for driver's license or identification card, disclosure of, Section 1653.5, Vehicle Code.

6276.42. State agency activities relating to unrepresented employees, subdivision (p) of Section 6254, Government Code.

State agency activities relating to providers of health care, subdivision (a) of Section 6254, Government Code.

State Auditor, access to barred records, Section 8545.2, Government Code.

State Auditor, confidentiality of records, Sections 8545, 8545.1, and 8545.3, Government Code.

State civil service employee, confidentiality of appeal to state personnel board, Section 18952, Government Code.

State civil service employees, confidentiality of reports, Section 18573, Government Code.

State civil service examination, confidentiality of application and examination materials, Section 18934, Government Code.

State Contract Act, bids, questionnaires and financial statements, Section 10165, Public Contract Code.

State Contract Act, bids, sealing, opening and reading bids, Section 10304, Public Contract Code.

State Energy Resources Conservation and Development Commission, confidentiality of proprietary information submitted to, Sections 25223 and 25321, Public Resources Code.

State hospital patients, information and records in possession of Superintendent of Public Instruction, confidentiality of, Section 56863, Education Code.

State information security officer, implementation of confidentiality policies, Section 11771, Government Code.

State Long-Term Care Ombudsman, access to government agency records, Section 9723, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, confidentiality of records and files, Section 9725, Welfare and Institutions Code.

State Long-Term Care Ombudsman office, disclosure of information or communications, Section 9715, Welfare and Institutions Code.

State Lottery Evaluation Report, disclosure, Section 8880.46, Government Code.

State summary criminal history information, confidentiality of information, Sections 11105, 11105.1, 11105.3, and 11105.4, Penal Code.

Sterilization of disabled, confidentiality of evaluation report, Section 1955, Probate Code.

Strawberry marketing information, confidentiality of, Section 63124, Food and Agricultural Code.

Structural pest control licensee records relating to pesticide use, confidentiality of, Section 15205, Food and Agricultural Code.

Student driver, records of physical or mental condition, confidentiality of, Section 12661, Vehicle Code.

Student, community college, information received by school counselor, confidentiality of, Section 72621, Education Code.

Student, community college, records, limitations on release, Section 76243, Education Code.

Student, community college, record contents, records of administrative hearing to change contents, confidentiality of, Section 76232, Education Code.

Student, sexual assault on private higher education institution campus, confidentiality of information, Section 94385, Education Code.

Student, sexual assault on public college or university, confidentiality of information, Section 67385, Education Code.

Student in public college or university, record of disciplinary action for sexual assault or physical abuse, access by alleged victim, Section 67134, Education Code.

Student, release of directory information by public college or university, Section 67140, Education Code.

Surgeon egg processors, records, Section 10004, Fish and Game Code.

6276.44. Taxpayer information, confidentiality, local taxes, subdivision (i), Section 6254, Government Code.

Tax preparer, disclosure of information obtained in business of preparing tax returns, Section 17530.5, Business and Professions Code.

Teacher, credential holder or applicant, information provided to Commission on Teacher Credentialing, confidentiality of, Section 44341, Education Code.

Teacher, certified school personnel examination results, confidentiality of, Section 44289, Education Code.

Teacher, information filed with Teachers' Retirement Board, confidentiality of, Section 22221, Education Code.

Telephone answering service customer list, trade secret, Section 16606, Business and Professions Code.

Timber yield tax, disclosure to county assessor, Section 38706, Revenue and Taxation Code.

Timber yield tax, disclosure of information, Section 38705, Revenue and Taxation Code.

Title insurers, confidentiality of notice of noncompliance, Section 12414.14, Insurance Code.

Tow truck driver, information in records of California Highway Patrol, Department of Motor Vehicles, or other agencies, confidentiality of, Sections 2431 and 2432.3, Vehicle Code.

Toxic substances, Department of, inspection of records of, Section 25152.5, Health and Safety Code.

Trade secrets, Section 1060, Evidence Code.

Trade secrets, confidentiality of, occupational safety and health inspections, Section 6322, Labor Code.

Trade secrets, disclosure of public records, Section 3426.7, Civil Code.

Trade secrets, food, drugs, cosmetics, nondisclosure, Sections 110165 and 110370, Health and Safety Code.

Trade secrets, protection by Director of the Department of Pesticide Regulation, Section 6254.2, Government Code.

Trade secrets and proprietary information relating to pesticides, confidentiality of, Sections 14022 and 14023, Food and Agricultural Code.

Trade secrets, protection by Director of Industrial Relations, Section 6396, Labor Code.

Trade secrets relating to hazardous substances, disclosure of, Sections 25358.2 and 25358.7, Health and Safety Code.

Traffic violator school licensee records, confidentiality of, Section 11212, Vehicle Code.

Traffic offense, dismissed for participation in driving school or program, record of, confidentiality of, Section 1808.7, Vehicle Code.

Transit districts, questionnaire and financial statement information in bids, Section 99154, Public Utilities Code.

Trust companies, disclosure of private trust confidential information, Section 1582, Financial Code.

6276.46. Unclaimed property, Controller records of, disclosure, Section 1582, Code of Civil Procedure.

Unemployment compensation, disclosure of confidential information, Section 2111, Unemployment Insurance Code.

Unemployment compensation, information obtained in administration of code, Section 1094, Unemployment Insurance Code.

Unemployment compensation, purposes for which use of information may be authorized, Section 1095, Unemployment Insurance Code.

Unemployment fund contributions, publication of annual tax rate, Section 989, Unemployment Insurance Code.

Unsafe working condition, confidentiality of complainant, Section 6309, Labor Code.

Use fuel tax information, disclosure prohibited, Section 9255, Revenue and Taxation Code.

Utility systems development, confidential information, subdivision (e), Section 6254, Government Code.

Vehicle registration, financial responsibility verification study, confidentiality of information, Sections 4750.2 and 4750.4, Vehicle Code.

Vehicle accident reports, disclosure of, Sections 16005, 20012, and 20014, Vehicle Code and Section 27177, Streets and Highways Code.

Vehicular offense, record of, confidentiality five years after conviction, Section 1807.5, Vehicle Code.

Veterans Affairs, Department of, confidentiality of records of contract purchasers, Section 85, Military and Veterans Code.

Veterinarian or animal health technician, alcohol or dangerous drugs diversion and rehabilitation records, confidentiality of, Section 4871, Business and Professions Code.

Victim, statements at sentencing, Section 1191.15, Penal Code.

Victims' Legal Resource Center, confidentiality of information and records retained, Section 13897.2, Penal Code.

Victims of crimes compensation program, confidentiality of records, subdivision (d), Section 13968, Government Code.

Voter, registration by confidential affidavit, Section 2194, Elections Code.

Voter registration card, confidentiality of information contained in, Section 6254.4, Government Code.

Voting, secrecy, Section 1050, Evidence Code.

Wards and dependent children, inspection of juvenile court documents, Section 827, Welfare and Institutions Code.

6276.48. Wards and dependent children, release of description information about minor escapees, Section 828, Welfare and Institutions Code.

Wards, petition for sealing records, Section 781, Welfare and Institutions Code.

Welfare, statewide automated system work plan, confidentiality of data on individuals, Section 10818, Welfare and Institutions Code.

Wills, confidentiality of, Section 6389, Probate Code.

Winegrowers of California commission, confidentiality of producers' or vintners' proprietary information, Sections 74655 and 74955, Food and Agricultural Code.

Workers' Compensation Appeals Board, injury or illness report, confidentiality of, Section 6412, Labor Code.

Workers' compensation insurance, dividend payment to policyholder, confidentiality of information, Section 11739, Insurance Code.

Workers' compensation insurance fraud reporting, confidentiality of information, Sections 1877.3 and 1877.4, Insurance Code.

Workers' compensation insurer or rating organization, confidentiality of notice of noncompliance, Section 11754, Insurance Code.

Workers' compensation insurer, rating information, confidentiality of, Section 11752.7, Insurance Code.

Workers' compensation, notice to correct noncompliance, Section 11754, Insurance Code.

Workers' compensation, release of information to other governmental agencies, Section 11752.5, Insurance Code.

Workers' compensation, self-insured employers, confidentiality of financial information, Section 3742, Labor Code.

Workplace inspection photographs, confidentiality of, Section 6314, Labor Code.

Youth Authority, parole revocation proceedings, confidentiality of, Section 1767.6, Welfare and Institutions Code.

Youth Authority, release of information in possession of Youth Authority for offenses under Sections 676, 1764.1, and 1764.2, Welfare and Institutions Code.

Youth Authority, records, policies, and procedures, Section 1905, Welfare and Institutions Code.

Youth Authority, records, disclosure, Section 1764, Welfare and Institutions Code.

Youth Authority parolee, disclosure of personal information in revocation proceedings, Section 1767.6, Welfare and Institutions Code.

Youth service bureau, confidentiality of client records, Section 1905, Welfare and Institutions Code.

CHAPTER 5. JOINT EXERCISE OF POWERS
ARTICLE 1. JOINT POWERS AGREEMENTS

6522. Notwithstanding any other provision of this chapter, any state department or agency entering into a joint powers agreement with a federal, county, or city government or agency or public district in order to create a joint powers agency, shall ensure that the participation goals specified in Section 16850 and Section 10115 of the Public Contract Code and in Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code become a part of the agreement, and shall apply to contracts executed by the joint powers agency.

CHAPTER 12.8. ENTERPRISE ZONE ACT

7070. This chapter shall be known and may be cited as the Enterprise Zone Act.

7071. The Legislature finds and declares as follows:

(a) The health, safety, and welfare of the people of California depend upon the development, stability, and expansion of private business, industry, and commerce, and there are certain areas within the state that are economically depressed due to a lack of investment in the private sector. Therefore, it is declared to be the purpose of this chapter to stimulate business and industrial growth in the depressed areas of the state by relaxing regulatory controls that impede private investment.

(b) It is in the economic interest of the state to have one strong, combined, and business-friendly incentive program to help attract business and industry to the state, to help retain and expand existing state business and industry, and to create increased job opportunities for all Californians.

(c) No enterprise zone shall be designated in which any boundary thereof is drawn in a manner so as to include larger stable businesses or heavily residential areas to the detriment of areas that are truly economically depressed.

(d) Nothing in this chapter shall be construed to infringe upon regulations relating to the civil rights, equal employment rights, equal opportunity rights, or fair housing rights of any person.

7072. For purposes of this chapter, the following definitions shall apply:

(a) "Agency" means the Department of Housing and Community Development.

(b) "Date of original designation" means the earlier of the following:

(1) The date the eligible area receives designation as an enterprise zone by the agency pursuant to this chapter.

(2) In the case of an enterprise zone deemed designated pursuant to subdivision (e) of Section 7073, the date the enterprise zone or program area received original designation by the agency pursuant to Chapter 12.8 (commencing with Section 7070) or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

(c) "Eligible area" means any of the following:

(1) An area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070), as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080), as it read prior to January 1, 1997.

(2) A geographic area that, based upon the determination of the agency, fulfills at least one of the following:

(A) The proposed geographic area meets the Urban Development Action Grant criteria of the United States Department of Housing and Urban Development.

(B) The area within the proposed zone has experienced plant closures within the past two years affecting more than 100 workers.

(C) The city or county has submitted material to the agency for a finding that the proposed geographic area meets criteria of economic distress related to those used in determining eligibility under the Urban Development Action Grant Program and is therefore an eligible area.

(D) The area within the proposed zone has a history of gang-related activity, whether or not crimes of violence have been committed.

(3) A geographic area that meets at least two of the following criteria:

(A) The census tracts within the proposed zone have an unemployment rate not less than 3 percentage points above the statewide average for the most recent calendar year as determined by the Employment Development Department.

(B) The county of the proposed zone has more than 70 percent of the children enrolled in public school participating in the federal free lunch program.

(C) The median household income for a family of four within the census tracts of the proposed zone does not exceed 80 percent of the statewide median income for the most recently available calendar year.

(d) "Enterprise zone" means any area within a city, county, or city and county that is designated as such by the agency in accordance with the provisions of Section 7073.

(e) "Governing body" means a county board of supervisors or a city council, as appropriate.

(f) "High technology industries" include, but are not limited to, the computer, biological engineering, electronics, and telecommunications industries.

(g) "Resident," unless otherwise defined, means a person whose principal place of residence is within a targeted employment area.

(h) "Targeted employment area" means an area within a city, county, or city and county that is composed solely of those census tracts designated by the United States Department of Housing and Urban Development as having at least 51 percent of its residents of low- or moderate-income levels, using either the most recent United States Department of Census data available at the time of the original enterprise zone application or the most recent census data available at the time the targeted employment area is designated to determine that eligibility. The purpose of a "targeted employment area" is to encourage businesses in an enterprise zone to hire eligible residents of certain geographic areas within a city, county, or city and county. A targeted employment area may be, but is not required to be, the same as all or part of an enterprise zone. A targeted employment area's boundaries need not be contiguous. A targeted employment area does not need to encompass each eligible census tract within a city, county, or city and county. The governing body of each city, county or city and county that has jurisdiction of the enterprise zone shall identify those census tracts whose residents are in the most need of this employment targeting. Only those census tracts within the jurisdiction of the city, county, or city and county that has jurisdiction of the enterprise zone may be included in a targeted employment area.

At least a part of each eligible census tract within a targeted employment area shall be within the territorial jurisdiction of the city, county, or city and county that has jurisdiction for an enterprise zone. If an eligible census tract encompasses the territorial jurisdiction of two or more local governmental entities, all of those entities shall be a party to the designation of a targeted employment area. However, any one or more of those entities, by resolution or ordinance, may specify that it shall not participate in the application as an applicant, but shall agree to complete all actions stated within the application that apply to its jurisdiction, if the area is designated.

Each local governmental entity of each city, county, or city and county that has jurisdiction of an enterprise zone shall approve, by resolution or ordinance, the boundaries of its targeted employment area, regardless of whether a census tract within the proposed targeted employment area is outside the jurisdiction of the local governmental entity.

7072.5. By April 1, 1998, a governing body that has already designated a target employment area may request, by a resolution of all cities or counties having jurisdiction over the enterprise zone, to redesignate the targeted employment area using more current census data. A targeted employment area shall be comprised of census tracts from only one decennial census.

7073. (a) Except as provided in subdivision (e), any city, county, or city and county with an eligible area within its jurisdiction may complete a preliminary application for designation as an enterprise zone. The applying entity shall establish definitive boundaries for the proposed enterprise zone and the targeted employment area.

(b) (1) In designating enterprise zones, the agency shall select from the applications submitted those proposed enterprise zones that, upon a comparison of all of the applications submitted, indicate that they propose the most effective, innovative, and comprehensive regulatory, tax, program, and other incentives in attracting private sector investment in the zone proposed.

(2) For purposes of this subdivision, regulatory incentives include, but are not limited to, all of the following:

(A) The suspension or relaxation of locally originated or modified building codes, zoning laws, general development plans, or rent controls.

(B) The elimination or reduction of fees for applications, permits, and local government services.

(C) The establishment of a streamlined permit process.

(3) For purposes of this subdivision, tax incentives include, but are not limited to, the elimination or reduction of construction taxes or business license taxes.

(4) For the purposes of this subdivision, program and other incentives may include, but are not limited to, all of the following:

(A) The provision or expansion of infrastructure.

(B) The targeting of federal block grant moneys, including small cities, education, and health and welfare block grants.

(C) The targeting of economic development grants and loan moneys, including grant and loan moneys provided by the federal Urban Development Action Grant program and the federal Economic Development Administration.

(D) The targeting of state and federal job disadvantaged and vocational education grant moneys, including moneys provided by the federal Job Training Partnership Act of 1982 (Public Law 97-300).

(E) The targeting of federal or state transportation grant moneys.

(F) The targeting of federal or state low-income housing and rental assistance moneys.

(G) The use of tax allocation bonds, special assessment bonds, bonds under the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5), industrial development bonds, revenue bonds, private activity bonds, housing bonds, bonds issued pursuant to the Marks-Roos Local Bond Pooling Act of 1985 (Article 4 (commencing with Section 6584) of Chapter 5), certificates of participation, hospital bonds, redevelopment bonds, school bonds, and all special provisions provided for under federal tax law for enterprise community or empowerment zone bonds.

(5) In the process of designating new enterprise zones, the agency shall take into consideration the location of existing zones and make every effort to locate new zones in a manner that will not adversely affect any existing zones.

(6) In designating new enterprise zones, the agency shall include in its criteria the fact that jurisdictions have been declared disaster areas by the President of the United States within the last seven years.

(7) When reviewing and ranking new enterprise zone applications, the agency shall give special consideration or bonus points, or both, to applications from jurisdictions that meet at least two of the following criteria:

(A) The percentage of households within the census tracts of the proposed enterprise zone area, the income of which is below the poverty level, is at least 17.5 percent.

(B) The average unemployment rate for the census tracts of the proposed enterprise zone area was not less than five percentage points above the statewide average for the most recent calendar year as determined by the Employment Development Department.

(C) The applicant jurisdiction has, and can document that it has, a unique distress factor affecting long-term economic development, including, but not limited to, resource depletion, plant closure, industry recession, natural disaster, or military base closure.

(c) In evaluating applications for designation, the agency shall ensure that applications are not disqualified solely because of technical deficiencies, and shall provide applicants with an opportunity to correct the deficiencies. Applications shall be disqualified if the deficiencies are not corrected within two weeks.

(d) (1) Except as provided in paragraph (2), or upon dedesignation pursuant to subdivision (c) of Section 7076.1 or Section 7076.2, a designation made by the agency shall be binding for a period of 15 years from the date of the original designation.

(2) The designation period for any zone designated pursuant to either Section 7073 or 7085 prior to 1990 may total 20 years, subject to possible dedesignation pursuant to subdivision (c) of Section 7076.1 or Section 7076.2, if the following requirements are met:

(A) The zone receives a superior or passing audit pursuant to subdivision (c) of Section 7076.1.

(B) The local jurisdictions comprising the zone submit an updated economic development plan to the agency justifying the need for an additional five years by defining goals and objectives that still need to be achieved and indicating what actions are to be taken to achieve these goals and objectives.

(e) (1) Notwithstanding any other provision of law, any area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or as a targeted economic development area, neighborhood economic development area, or program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, or any program area or part of a program area deemed designated as an enterprise zone pursuant to Section 7085.5 as it read prior to January 1, 1997, shall be deemed to be designated as an enterprise zone pursuant to this chapter. The effective date of designation of the enterprise zone shall be that of the original designation of the enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or of the program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, and in no event may the total designation period exceed 15 years, except as provided in paragraph (2) of subdivision (d).

(2) Notwithstanding any other provision of law, any enterprise zone authorized, but not designated, pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, shall be allowed to complete the application process started pursuant to that chapter, and to receive final designation as an enterprise zone pursuant to this chapter.

(3) Notwithstanding any other provision of law, any expansion of a designated enterprise zone or program area authorized pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, shall be deemed to be authorized as an expansion for a designated enterprise zone pursuant to this chapter.

(4) No part of this chapter may be construed to require a new application for designation by an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or a targeted economic development area, neighborhood economic development area, or program area designated pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997.

(f) Notwithstanding any other provision of law, a city, county, or a city and county may designate a joint powers authority to administer the enterprise zone.

(g) No more than 42 enterprise zones may be designated at any one time pursuant to this chapter, including those deemed designated pursuant to subdivision (e). Upon the expiration or termination of a designation, the agency is authorized to designate another enterprise zone to maintain a total of 42 enterprise zones.

7073.8. (a) The agency shall designate up to two Manufacturing Enhancement Areas, as defined by Section 17053.47 of the Revenue and Taxation Code, requested by the governing boards of cities each of which shall meet at least the following criteria:

(1) The unemployment rate in the county in which the applicant is located has been at least three times the state average from 1990 to 1995, inclusive.

(2) The applicant city is, or portions of the city are, designated a federal enterprise community or empowerment zone pursuant to Subchapter U (commencing with Section 1391) of Chapter 1 of Subtitle A of Title 26 of the United States Code.

(3) The applicant city is located in a Border Environment Cooperation Commission region as specified in Section 3473 of Title 19 of the United States Code.

(4) At least one of the following:

(A) The designated area has grown by less than 5 percent in population per year for each of the two years preceding the application date.

(B) The median household income for the designated area is under twenty-five thousand dollars (\$25,000) per year.

(C) The designated area has a population of under 20,000 persons according to the 1990 federal census.

(D) The designated area is located in a rural community.

(5) An audit of the program shall be made at the end of the 5th and 10th year of its operation by the Trade and Commerce Agency with the cooperation of the local governing board. The audit shall be used to determine how effective the designation has been in attracting manufacturing facilities and creating new employment opportunities. Continuation of the designation is contingent on evidence of success of the program.

(b) For purposes of applying any provision of the Revenue and Taxation Code, any Manufacturing Enhancement Area designated pursuant to this section shall not be considered an enterprise zone designated pursuant to this chapter.

(c) The designation as a Manufacturing Enhancement Area pursuant to this section shall be binding for a period of 15 years, commencing January 1, 1998.

7073.9. Upon approval by the agency of an application by a city or county, or city and county, a manufacturing enhancement area in Imperial County is expanded to the extent proposed, but in no event by more than a 200-acre site that is located in Imperial County and used for purposes of those lines of business described in Codes 2011 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, to include definitive boundaries that are contiguous to the manufacturing enhancement area. The agency shall approve an application for expansion of the manufacturing enhancement area if the agency determines that the proposed additional territory meets the criteria specified in Section 7073.8 to the same extent as the existing territory of the manufacturing area and if all of the following conditions are met:

(a) The governing body of each city in which the manufacturing enhancement is located approves an ordinance or resolution approving the proposed expansion of that area.

(b) The additional territory proposed to be added to the manufacturing enhancement area is zoned for industrial or commercial use.

(c) Basic infrastructure, including, but not limited to, gas, water, electrical service, and sewer systems is available to the additional territory proposed to be added to the manufacturing enhancement area.

7074. (a) In the case of any enterprise zone, including an enterprise zone formerly designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) as it read prior to January 1, 1997, or as a program area pursuant to Chapter 12.9 (commencing with Section 7080) as it read prior to January 1, 1997, a city or county, or city and county may propose that the enterprise zone be expanded by 15 percent to include definitive boundaries that are contiguous to the enterprise zone.

(b) The agency may approve an enterprise zone expansion proposed pursuant to this section based on the following criteria:

(1) Each of the adjacent jurisdictions' governing bodies approves the expansion by adoption of an ordinance or resolution.

(2) Land included within the proposed expansion is zoned for industrial or commercial use.

(3) Basic infrastructure, including, but not limited to, gas, water, electrical service, and sewer systems, is available to the area that would be included in the expansion.

(c) An enterprise zone may propose to use an eligible expansion allotment to expand into an adjacent jurisdiction pursuant to this section if the agency finds that all of the following conditions exist:

(1) The governing body of the local agency with jurisdiction over the existing enterprise zone and the governing body of the local agency with jurisdiction over the proposed expansion area each approve the expansion by adoption of an ordinance or resolution. The ordinance or resolution by the jurisdiction containing the proposed expansion area shall indicate that the jurisdiction will provide the same or equivalent local incentives as provided by the jurisdiction of the existing enterprise zone.

(2) (A) Land included within the proposed expansion is zoned for industrial or commercial use.

(B) An expansion area may contain noncommercial or nonindustrial land only if that land is a right-of-way and is needed to meet the requirement for a contiguous expansion between an existing enterprise zone and a proposed expansion area.

(3) Basic infrastructure, including, but not limited to, gas, water, electrical service, and sewer systems, is available to the area that would be included in the expansion.

(4) The expansion area is contiguous to the existing enterprise zone.

(d) (1) Except as otherwise provided in paragraph (2), in no event shall an enterprise zone be permitted to expand more than 15 percent in size from its size on the date of original designation, including any expansion authorized pursuant to Chapter 12.8 (commencing with Section 7070), or Chapter 12.9 (commencing with Section 7080), as those chapters read prior to January 1, 1997.

(2) If an enterprise zone, on the date of original designation, is no greater than 13 square miles, it may be permitted to expand up to 20 percent in size from its size on the date of original designation.

7074.5. In the case of the Counties of Fresno and Kern, an enterprise zone that is located in a city or in the unincorporated area of the county may propose to use eligible expansion allotment to expand into an adjacent city or cities, or an adjacent unincorporated area of the county, subject to the conditions specified in Section 7074.

7075. (a) Upon filing a preliminary application, the applicant, as lead agency, shall submit an initial study and a notice of preparation to the agency, the state clearinghouse, and all responsible agencies.

(b) Only a city, county, or city and county chosen by the agency as a final applicant shall prepare, or cause to be prepared, a draft environmental impact report, which shall set forth the potential environmental impacts of any and all development planned within the enterprise zone. The draft environmental impact report shall be submitted to the agency with the final application.

(c) Prior to final designation by the agency, the applicant shall complete and certify the final environmental impact report.

(d) The environmental impact report shall comply with the information disclosure provisions and the substantive requirements of Division 13 (commencing with Section 21000) of the Public Resources Code.

(e) No further environmental impact report shall be required if the effects of the project were any of the following:

(1) Mitigated or avoided as a result of the environmental impact report prepared for the area.

(2) Examined at a sufficient level of detail in the environmental impact report for the area to enable those effects to be mitigated or avoided by specific site revisions, the imposition of conditions, or other means in connection with the designation of the area.

(3) Identified in the final environmental impact report and the lead agency made written findings that specific economic, social, or other considerations made the mitigation measures or project alternatives identified in the final environmental impact report unfeasible.

7076. (a) (1) The agency shall provide technical assistance to the enterprise zones designated pursuant to this chapter with respect to all of the following activities:

(A) Furnish limited onsite assistance to the enterprise zones when appropriate.

(B) Ensure that the locality has developed a method to make residents, businesses, and neighborhood organizations aware of the opportunities to participate in the program.

(C) Help the locality develop a marketing program for the enterprise zone.

(D) Coordinate activities of other state agencies regarding the enterprise zones.

(E) Monitor the progress of the program.

(F) Help businesses to participate in the program.

(2) Notwithstanding existing law, the provision of services in subparagraphs (A) to (F), inclusive, shall be a high priority of the agency.

(3) The agency may, at its discretion, undertake other activities in providing management and technical assistance for successful implementation of this chapter.

(b) The applicant shall be required to begin implementation of the enterprise zone plan contained in the final application within six months after notification of final designation or the enterprise zone shall lose its designation.

7076.1. (a) The agency may audit the program of any jurisdiction in any designated zone at any time during the duration of the designation, as appropriate, or at least every five years from the date of designation or the operative date of this section, whichever is the latest. The matters to be examined in the course of an audit shall include an examination of the progress made by the zone toward meeting the goals, objectives, and commitments set forth in its original application and the agency's memorandum of understanding with the zone.

(b) The agency shall, for each audit, determine a result of superior, pass, or fail in accordance with subdivision (c). The results of each audit shall be based upon the success of the zone in making substantial and sustained efforts since the later of its designation or last audit to meet the standards, criteria, and conditions contained in the application and the memorandum of understanding (MOU) between the agency and the zone, as may be amended pursuant to the agreement of the zone and the agency. In each audit, the agency shall focus upon the zone's use of the marketing plan, local incentives, financing programs, job development, and program management as described in the application and the MOU. The agency shall also evaluate the vouchering plan, zone staff levels, zone budget, and elements unique to each application.

(c) For purposes of subdivision (b), an audit determination of superior, pass, or fail shall be made in accordance with the following:

(1) A zone will be determined to be superior if each jurisdiction comprising the zone does all of the following:

(A) Meets 100 percent of its goals, objectives, and commitments as defined in its application or most recent audit, and as determined by the agency in consultation with the zone. An equivalent or similar commitment may be substituted for an existing commitment of a zone if it is determined by the agency that an original commitment was not realistically practical or is no longer relevant.

(B) Demonstrates that it has reviewed and updated its goals, objectives, and commitments as defined in its original application or most recent audit.

(C) Identifies to the agency's satisfaction that it has incorporated economic development commitments in addition to those commitments previously made in its application.

(2) (A) A zone will be determined to be passing if each jurisdiction comprising the zone meets or exceeds 75 percent of its goals, objectives, or commitments as defined in its original application or audit, and as determined by the agency in consultation with the zone. An equivalent or similar commitment may be substituted for an existing commitment of a zone if it is determined by the agency that an original commitment was not realistically practical or is no longer relevant.

(B) Any zone that is determined to be passing may appeal in writing to the agency for a determination of superior. Only one appeal may be filed pursuant to this subparagraph with respect to a determination by the agency, and may be filed no later than 30 days after the zone's receipt of the determination to which the appeal pertains. The agency shall respond in writing to

any appeal that is properly filed pursuant to this subparagraph within 60 days of the date of that filing.

(3) (A) A zone will be determined to be failing if any jurisdiction comprising the zone fails to meet or exceed 75 percent of its goals, objectives, or commitments as defined in its original application or audit, and as determined by the agency in consultation with the zone. An equivalent or similar commitment may be substituted for an existing commitment of a zone if it is determined by the agency that an original commitment was not realistically practical or is no longer relevant.

(B) Any zone that is determined to be failing shall enter into a written agreement with the agency that specifies those items that the zone is required to remedy or improve. Failure of the zone and the agency to negotiate and enter into a written agreement as so described within 60 days of the last day upon which the agency is required to deliver a response letter pursuant to subparagraph (C) shall result in the dedesignation of the zone on January 1 immediately following the agency's written notice of dedesignation to the zone. A written agreement entered into pursuant to this subparagraph shall be for a six-month period. If, upon the expiration of the agreement, the agency determines that the zone has not met or implemented at least 75 percent of the conditions set forth in the agreement, the agency shall, after immediately providing written notification to each jurisdiction comprising the zone that the zone is to be dedesignated, dedesignate the zone effective on the first day of the month next following the date upon which the agreement expired. If, upon expiration of the agreement, the agency determines that the zone has met or implemented at least 75 percent of the conditions set forth in the agreement, the agency shall do either of the following:

(i) Allow the zone an additional year, or a longer period in the agency's discretion, to meet or implement those conditions in their entirety.

(ii) Pursuant to written notice provided immediately to each jurisdiction that comprises the zone that the zone is to be dedesignated, dedesignate the zone effective on January 1 immediately following the date of the agency's written notification of dedesignation to those jurisdictions.

Any business, located within any jurisdiction that comprises a zone that has been dedesignated, that has elected to avail itself of any state tax incentive specifically applicable to a zone for any taxable or income year beginning prior to the dedesignation of the zone may, to the extent the business is otherwise still eligible for those incentives, continue to avail itself of those incentives for a period equal to the remaining life of the zone. However, any business, located within any jurisdiction that comprises a zone that has been dedesignated, that has not availed itself of any state tax incentive in the manner described in the preceding sentence may not, after dedesignation of the zone, avail itself of any state incentive specifically applicable to a zone.

(d) (1) For purposes of this paragraph, "dedesignation" means that a zone is no longer a zone for purposes of either Section 7073 or 7085.

(2) Upon notification by the agency of the dedesignation of a zone and the end of the appeal period with respect to that dedesignation, the agency shall initiate an application process for a new designation as provided in Section 7073.

7076.2. (a) The agency shall dedesignate a zone on the first day of the month immediately following the date upon which the agency has received from each jurisdiction comprising the zone a resolution, adopted by the governing body of that jurisdiction, requesting the dedesignation of the zone. Upon the dedesignation of a zone pursuant to this paragraph, the agency shall initiate an application process for a new designation as provided in Section 7073.

(b) The agency shall exclude from a zone that portion of that zone that is located within a jurisdiction on the first day of the month immediately following the date upon which the agency receives from that jurisdiction a resolution, adopted by the governing body of that jurisdiction, requesting that exclusion. Any jurisdiction that provides notice to the agency pursuant to this paragraph shall concurrently provide a copy of that notice to all other jurisdictions that comprise the affected zone.

(c) Any business, located within any jurisdiction that comprises a zone that has been dedesignated or within a jurisdiction that has excluded itself from a zone, that has elected to avail itself of any state tax incentive specifically applicable to a zone for any taxable or income year

beginning prior to the dedesignation of the zone or the exclusion of a jurisdiction comprising the zone may, to the extent the business is still otherwise eligible for those incentives, continue to avail itself of those incentives for a period equal to the remaining life of the zone. However, any business, located within any jurisdiction that comprises a zone that has been dedesignated or within a jurisdiction that has excluded itself from a zone, that has not availed itself of any state tax incentive in the manner described in the preceding sentence may not, after dedesignation of the zone, avail itself of any state incentive specifically applicable to a zone.

(d) For purposes of this section, "dedesignation" is defined as set forth in paragraph (1) of subdivision (d) of Section 7076.1.

7077. Notwithstanding any other provision of law, state and local agencies may lease land to businesses in a designated enterprise zone at a price below fair market value, provided that it serves a public purpose to lease at below fair market value.

7078. The limitations in Section 91503 on the allowable uses of proceeds of bonds issued pursuant to Title 10 (commencing with Section 91500) shall not apply to bonds issued on behalf of any enterprise zone or any portion of that zone.

7079. Notwithstanding any other provision of law, the Office of Small Business shall establish regulations for loans and loan guarantees administered by the office that give high priority to businesses in a designated enterprise zone.

7080. Notwithstanding Sections 32646 and 32647 of the Financial Code, a high priority in ranking loan applications by the State Assistance Fund for Energy, California Business and Development Corporation, shall be given to businesses in a designated enterprise zone, that are purchasing or providing alternative energy systems.

7081. Notwithstanding any other provision of state law, and to the extent permitted by federal law, the Employment Development Department and the State Department of Education shall give high priority to the training of unemployed individuals who reside in a targeted employment area or a designated enterprise zone. The agency may assist localities in designating local business, labor, and education consortia to broker activities between the employment community and educational and training institutions. Any available discretionary funds may be used to assist the creation of those consortia.

7082. Notwithstanding any other provision of law, the Office of Criminal Justice Planning shall give high priority to designated enterprise zones in the allocation of its program resources.

7083. Any designation of an enterprise zone in accordance with the provisions of this chapter shall be deemed appropriate state designation of an enterprise zone for purposes of qualifying that zone as an enterprise community or empowerment zone under federal law.

7084. (a) Whenever the state prepares a solicitation for a contract for goods in excess of one hundred thousand dollars (\$100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies that demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50 percent of the hours shall be accomplished at an identified worksite or worksites located in an enterprise zone.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars (\$100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies that demonstrate and certify under penalty of perjury that not less than 90 percent of the labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in an enterprise zone.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who certify under penalty of perjury to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 5 to 9 percent of its work force during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 10 to 14 percent of its work force during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 15 to 19 percent of its work force during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 20 or more percent of its work force during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference cost under this section exceed fifty thousand dollars (\$50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other provision of law exceed one hundred thousand dollars (\$100,000). In those cases where the 15-percent cumulated preference cost would exceed the one hundred thousand dollar (\$100,000) maximum preference cost limit, the one hundred thousand dollar (\$100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder incentive.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a) or (b) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(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 directly or indirectly transact any business with the state for a period of not less than three months and not more than 24 months.

(2) Prior to the imposition of any sanction under this subdivision, the business 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.

(h) In each instance in this section an enterprise zone shall also mean any enterprise zone or program area previously authorized under any other provision of state law.

(i) As used in this section, "enterprise zone eligible employees" means employees who meet any of the requirements of clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.74, or clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 23622.5 of the Revenue and Taxation Code.

7085. (a) The agency shall submit a report to the Legislature every five years beginning January 1, 1998, that evaluates the effect of the program on employment, investment, and incomes, and on state and local tax revenues in designated enterprise zones. The report shall include an agency review of the progress and effectiveness of each enterprise zone. The Franchise Tax Board shall make available to the agency and the Legislature aggregate information on the dollar value of enterprise zone tax credits that are claimed each year by businesses.

(b) An enterprise zone governing body shall provide information at the request of the agency as necessary for the agency to prepare the report required pursuant to subdivision (a).

7085.5. The Franchise Tax Board shall annually make available to the agency and the Legislature information, by enterprise zone and by city or county, on the dollar value of the enterprise zone tax credits that are claimed each year by businesses and shall design and distribute forms and instructions that will allow the following information to be accessible:

(a) The number of jobs for which the hiring credits are claimed.

(b) The number of new employees for which hiring credits are claimed.

(c) The number of businesses claiming each individual tax credit.

(d) The nature of the business claiming each individual tax credit.

(e) The distribution of zone tax incentives among industry groups.

(f) The distribution of zone tax incentives by the annual receipts and asset value of the business claiming each individual tax credit.

(g) Any other information that the Franchise Tax Board and the agency deem to be important in determining the cost to, and benefit derived by, the taxpayers of the state.

7086. (a) The agency shall design, develop, and make available the applications and the criteria for selection of enterprise zones pursuant to Section 7073, and shall adopt all regulations necessary to carry out this chapter.

(b) The agency shall adopt regulations concerning the designation procedures and application process as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall not remain in effect more than 180 days unless the agency complies with all provisions of Chapter 3.5 as required by subdivision (e) of Section 11346.1.

(c) The Department of General Services, with the cooperation of the Employment Development Department, the Department of Industrial Relations, and the Office of Planning and Research, and under the direction of the State and Consumer Services Agency, shall adopt appropriate rules, regulations, and guidelines to implement Section 7084.

CHAPTER 12.97 LOCAL AGENCY MILITARY BASE RECOVERY AREA ACT (LAMBRA)

7118. (a) Whenever the state prepares a solicitation for a contract for goods in excess of one hundred thousand dollars (\$100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies who demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50 percent of the hours shall be accomplished at an identified worksite or worksites located in a local agency military base recovery area.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars (\$100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies

who demonstrate and certify under penalty of perjury that not less than 90 percent of the labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in a local agency military base recovery area.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who certify under penalty of perjury to hire persons living within a local agency military base recovery area equal to 5 to 9 percent of its workforce during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 10 to 14 percent of its workforce during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 15 to 19 percent of its workforce during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 20 or more percent of its workforce during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference cost under this section exceed fifty thousand dollars (\$50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other provision of law exceed one hundred thousand dollars (\$100,000). In those cases where the 15-percent cumulated preference cost would exceed the one hundred thousand dollar (\$100,000) maximum preference cost limit, the one hundred thousand dollar (\$100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a) or (b) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(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 directly or indirectly transact any business with the state for a period of not less than three months and not more than 24 months.

(2) Prior to the imposition of any sanction under this subdivision, the business 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.

(h) In each instance in this section, a local agency military base recovery area shall also mean any local agency military base recovery area previously authorized under any other provision of state law.

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA
DIVISION 1. GENERAL
CHAPTER 5.5. DRUG-FREE WORKPLACE
ARTICLE 1. DEFINITIONS

8350. This chapter shall be known, and may be cited, as the Drug-Free Workplace Act of 1990.

8351. As used in this chapter:

(a) "Drug-free workplace" means a site for the performance of work done in connection with a specific grant or contract described in Article 2 (commencing with Section 8355) of an entity at which employees of the entity are prohibited from engaging in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in accordance with the requirements of this chapter.

(b) "Employee" means the employee of a grantee or contractor directly engaged in the performance of work pursuant to the grant or contract described in Article 2 (commencing with Section 8355).

(c) "Controlled substance" means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. Sec. 812).

(d) "Grantee" means the department, division, or other unit of a person or organization responsible for the performance under the grant.

(e) "Contractor" means the department, division, or other unit of a person or organization responsible for the performance under the contract.

ARTICLE 2. STATE CONTRACTORS AND GRANTEES

8355. Every person or organization awarded a contract or a grant for the procurement of any property or services from any state agency shall certify to the contracting or granting agency that it will provide a drug-free workplace by doing all of the following:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's workplace and specifying the actions that will be taken against employees for violations of the prohibition.

(b) Establishing a drug-free awareness program to inform employees about all of the following:

(1) The dangers of drug abuse in the workplace.

(2) The person's or organization's policy of maintaining a drug-free workplace.

(3) Any available drug counseling, rehabilitation, and employee assistance programs.

(4) The penalties that may be imposed upon employees for drug abuse violations.

(c) Requiring that each employee engaged in the performance of the contract or grant be given a copy of the statement required by subdivision (a) and that, as a condition of employment on the contract or grant, the employee agrees to abide by the terms of the statement.

8356. (a) Each contract or grant awarded by a state agency may be subject to suspension of payments under the contract or grant or termination of the contract or grant, or both, and the contractor or grantee thereunder may be subject to debarment, in accordance with the requirements of this article, if the contracting or granting agency determines that any of the following has occurred:

(1) The contractor or grantee has made a false certification under Section 8355.

(2) The contractor or grantee violates the certification by failing to carry out the requirements of subdivisions (a) to (c), inclusive, of Section 8355.

(b) The Department of General Services shall establish and maintain a list of individuals and organizations whose contracts or grants have been canceled due to failure to comply with this chapter.

This list shall be updated monthly and published each month. No state agency shall award a contract or grant to a person or organization on the published list until that person or organization has complied with this chapter.

(c) Every state agency that directly awards grants without review by the Department of General Services shall immediately notify the department of any individual or organization that has an award canceled on the basis of violation of this chapter.

8357. This chapter shall not be construed to require any contractor or grantee to ensure that other businesses with which it subcontracts also provide drug-free workplaces.

CHAPTER 6.5. STATE AUDITOR
ARTICLE 2. POWERS AND DUTIES

8546.7. Notwithstanding any other provision of law, every contract involving the expenditure of public funds in excess of ten thousand dollars (\$10,000) entered into by any state agency, board, commission, or department or by any other public entity, including a city, county, city and county, or district, shall be subject to the examination and audit of the State Auditor, at the request of the public entity or as part of any audit of the public entity, for a period of three years after final payment under the contract. Every contract shall contain a provision stating that the contracting parties shall be subject to that examination and audit. The failure of a contract to contain this provision shall not preclude the State Auditor from conducting an examination and audit of the contract at the request of the public entity entering into the contract or as part of any audit of the public entity.

It is the intent of the Legislature that the Regents of the University of California include in contracts involving the expenditure of state funds in excess of ten thousand dollars (\$10,000) a provision stating that the contracting parties shall be subject to the examination and audit of the State Auditor, at the request of the regents or as part of any audit of the university, for a period of three years after final payment under the contract.

The examinations and audits under this section shall be confined to those matters connected with the performance of the contract, including, but not limited to, the costs of administering the contract.

DIVISION 3. EXECUTIVE DEPARTMENT
PART 1. STATE DEPARTMENTS AND AGENCIES
CHAPTER 1. STATE AGENCIES
ARTICLE 1. GENERAL

11005.3. Any state department, board, or commission may lease any real property for the use of the state agency for storage, warehouse, or office purposes provided that the lease term does not exceed three years and the annual rental does not exceed fifty thousand dollars (\$50,000).

Prior approval to engage in any lease activity shall first be obtained from the Department of General Services and the lease agreement shall be subject to approval by the department.

11010.5. (a) Where authority is vested in any state agency to contract on behalf of the state, such authority shall include the power, by mutual consent of the contracting parties, to terminate, amend, or modify any contract within the scope of such authorization heretofore or hereafter entered into by such state agency. The modification, amendment, or termination of any contract subject by law to the approval of the Department of General Services, Director of General Services, or other state agency, shall also be subject to such approval.

(b) Subdivision (a) of this section does not apply to contracts entered into pursuant to any statute expressly requiring that such contracts be let or awarded on the basis of competitive bids.

Contracts required to be let or awarded on the basis of competitive bids pursuant to any such statute may be terminated, amended, or modified only if such termination, amendment, or modification is so provided in the contract or is authorized under provision of law other than this subdivision. The compensation payable if any for such amendments and modifications shall be determined as provided in the contract. The compensation payable if any in the event the contract is so terminated shall be determined as provided in the contract or applicable statutory provision providing for such termination.

(c) Contracts of state agencies may include provisions for termination for environmental considerations at the discretion of such state agencies.

11015.5. (a) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, every state agency, including the California State University, that utilizes any method, device, identifier, or other data base application on the Internet to electronically collect personal information, as defined in subdivision (d), regarding any user shall prominently display the following at least one anticipated initial point of communication with a potential user, to be determined by each agency, and in instances when the specified information would be collected:

(1) Notice to the user of the usage or existence of the information gathering method, device, identifier, or other data base application.

(2) Notice to the user of the type of personal information that is being collected and the purpose for which the collected information will be used.

(3) Notice to the user of the length of time that the information gathering device, identifier, or other data base application will exist in the user's hard drive, if applicable.

(4) Notice to the user that he or she has the option of having his or her personal information discarded without reuse or distribution, provided that the appropriate agency official or employee is contacted after notice is given to the user.

(5) Notice to the user that any information acquired by the state agency, including the California State University, is subject to the limitations set forth in the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

(6) Notice to the user that state agencies shall not distribute or sell any electronically collected personal information, as defined in subdivision (d), about users to any third party without the permission of the user.

(7) Notice to the user that electronically collected personal information, as defined in subdivision (d), is exempt from requests made pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1).

(8) The title, business address, telephone number, and electronic mail address, if applicable, of the agency official who is responsible for records requests, as specified by subdivision (b) of Section 1798.17 of the Civil Code, or the agency employee designated pursuant to Section 1798.22 of that code, as determined by the agency, who is responsible for ensuring that the agency complies with requests made pursuant to this section.

(b) A state agency shall not distribute or sell any electronically collected personal information about users to any third party without prior written permission from the user, except as required to investigate possible violations of Section 502 of the Penal Code or as authorized under the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code). Nothing in this subdivision shall be construed to prohibit a state agency from distributing electronically collected personal information to another state agency or to a public law enforcement organization in any case where the security of a network operated by a state agency and exposed directly to the Internet has been, or is suspected of having been, breached.

(c) A state agency shall discard without reuse or distribution any electronically collected personal information, as defined in subdivision (d), upon request by the user.

(d) For purposes of this section:

(1) "Electronically collected personal information" means any information that is maintained by an agency that identifies or describes an individual user, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, medical or employment history, password, electronic mail address,

and information that reveals any network location or identity, but excludes any information manually submitted to a state agency by a user, whether electronically or in written form, and information on or relating to individuals who are users serving in a business capacity, including, but not limited to, business owners, officers, or principals of that business.

(2) "User" means an individual who communicates with a state agency or with an agency employee or official electronically.

(e) Nothing in this section shall be construed to permit an agency to act in a manner inconsistent with the standards and limitations adopted pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1) or the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code).

PART 2.8. DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING CHAPTER 8. NONDISCRIMINATION AND COMPLIANCE EMPLOYMENT PROGRAMS

12990. (a) Any employer who is, or wishes to become, a contractor with the state for public works or for goods or services is subject to the provisions of this part relating to discrimination in employment and to the nondiscrimination requirements of this section and any rules and regulations which implement it.

(b) Prior to becoming a contractor or subcontractor with the state, an employer may be required to submit a nondiscrimination program to the department for approval and certification and may be required to submit periodic reports of its compliance with such a program.

(c) Every state contract and subcontract for public works or for goods or services shall contain a nondiscrimination clause prohibiting discrimination on the bases enumerated in this part by contractors or subcontractors. The nondiscrimination clause shall contain a provision requiring contractors and subcontractors to give written notice of their obligations under that clause to labor organizations with which they have a collective bargaining or other agreement. Such contractual provisions shall be fully and effectively enforced.

(d) The department shall periodically develop rules and regulations for the application and implementation of this section, and submit them to the commission for consideration and adoption in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1. Those rules and regulations shall describe and include, but not be limited to, all of the following:

(1) Procedures for the investigation, approval, certification, decertification, monitoring, and enforcement of nondiscrimination programs.

(2) The size of contracts or subcontracts below which any particular provision of this section shall not apply.

(3) The circumstances, if any, under which a contractor or subcontractor is not subject to this section.

(4) Criteria for determining the appropriate plant, region, division, or other unit of a contractor's or subcontractor's operation for which a nondiscrimination program is required.

(5) Procedures for coordinating the nondiscrimination requirements of this section and its implementing rules and regulations with the California Plan for Equal Opportunity in Apprenticeship, with the provisions and implementing regulations of Article 9.5 (commencing with Section 11135) of Chapter 1 of Part 1, and with comparable federal laws and regulations concerning nondiscrimination, equal employment opportunity, and affirmative action by those who contract with the United States.

(6) The basic principles and standards to guide the department in administering and implementing this section.

(e) Where a contractor or subcontractor is required to prepare an affirmative action, equal employment, or nondiscrimination program subject to review and approval by a federal compliance agency, that program may be filed with the department, instead of any nondiscrimination program regularly required by this section or its implementing rules and regulations. Such a program shall constitute a prima facie demonstration of compliance with this section. Where the department or a federal compliance agency has required the preparation of an affirmative action, equal employment, or nondiscrimination program subject to review and

approval by the department or a federal compliance agency, evidence of such a program shall also constitute prima facie compliance with an ordinance or regulation of any city, city and county, or county which requires an employer to submit such a program to a local awarding agency for its approval prior to becoming a contractor or subcontractor with that agency.

(f) Where the department determines and certifies that the provisions of this section or its implementing rules and regulations are violated or where the commission, after hearing an accusation pursuant to Section 12967, determines a contractor or subcontractor is engaging in practices made unlawful under this part, the department or the commission may recommend appropriate sanctions to the awarding agency. Any such recommendation shall take into account the severity of the violation or violations and any other penalties, sanctions, or remedies previously imposed.

PART 3. DEPARTMENT OF FINANCE
CHAPTER 3. FISCAL AFFAIRS
ARTICLE 2.5. PROVISIONS APPLICABLE TO APPROPRIATIONS OF FUNDS

13332.09. No purchase order or other form of documentation for acquisition or replacement of motor vehicles shall be issued against any appropriation until the Department of General Services has investigated and established the necessity therefor. No surplus mobile equipment may be acquired from any source by any state agency for program support until the Department of General Services has investigated and established the necessity therefor.

All passenger-type motor vehicles purchased for state officers and employees, except constitutional officers, shall be American-made vehicles of the light class, as defined by the State Board of Control, unless excepted by the Director of General Services on the basis of unusual requirements, including, but not limited to, use by the California Highway Patrol, which would justify the need for a motor vehicle of a heavier class.

No general use mobile equipment having an original purchase price of twenty-five thousand dollars (\$25,000) or more shall be rented or leased from a nonstate source and payment therefor made from any appropriation for the use of the Department of Transportation, without the prior approval of the Department of General Services after a determination that comparable state-owned equipment is not available, unless obtaining approval would endanger life or property, in which case the transaction and the justification for not having sought prior approval shall be reported immediately thereafter to the Department of General Services. For purposes of this section, "general use mobile equipment" means equipment that is listed in the Mobile Equipment Inventory of the State Equipment Council and which is capable of being used by more than one agency, and shall not be deemed to refer to equipment having a practical use limited to the controlling agency only. Section 575 of the Vehicle Code shall have no application to this section.

13332.17. Purchase estimates for supplies or equipment submitted to the Department of General Services pursuant to Section 10311 of the Public Contract Code received during the last 90 days of a fiscal year and for which a purchase order award is pending at the end of that fiscal year, may be awarded during the initial 90 days of the subsequent fiscal year. The 90-day period shall be extended commensurate with the time required to resolve any protest filed pursuant to Section 10306 of the Public Contract Code.

Notwithstanding any other provision of law and regardless of the date of receipt of the materials, supplies or equipment, the date of expenditure and encumbrance for a purchase authorized by this section shall be construed to be the last day of the fiscal year in which the purchase estimate is received by the department. A purchase order awarded in accordance with the provisions of this section shall cite this section and the actual date of award.

PART 5.5. DEPARTMENT OF GENERAL SERVICES
CHAPTER 1. GENERAL PROVISIONS

14600. The Legislature declares that a centralization of business management functions and services of state government is necessary to take advantage of specialized techniques and skills, provide uniform management practices, and to insure a continuing high level of efficiency and economy. A Department of General Services is created to provide centralized services including, but not limited to, planning, acquisition, construction, and maintenance of state buildings and property; purchasing; printing; architectural services; administrative hearings; and accounting services. The Department of General Services shall develop and enforce policy and procedures and shall institute or cause the institution of those investigations and proceedings as it deems proper to assure effective operation of all functions performed by the department and to conserve the rights and interests of the state.

14608. Whenever any statute requires by the use of the word or words "approve," "approval," "authorize," or "authorization," the director of the department to approve or authorize any act or transaction, the approval or authorization shall be deemed to have been given only if given in writing by the director, the deputy director, or by some other officer or employee of the department acting pursuant to written authority of the director. The term "in writing" includes a secured electronic signature, whereby an electronically produced document may be signed electronically by the authorized signatory who possesses a secured electronic password available only to the signatory or his or her designee.

14614. The director and the civil executive officers of the department have the powers of a peace officer in all parts of the state in enforcing any lawful order of the department.

14615. (a) The department has general powers of supervision over all matters concerning the financial and business policies of the state in regard to the duties, powers, responsibilities, and jurisdiction specifically vested in the department. Whenever the department deems it necessary, or at the instance of the Governor, it shall institute or cause the institution of those investigations and proceedings as it deems proper to conserve the rights and interests of the state.

(b) The Department of the California Highway Patrol has jurisdiction over those matters related to the security of state officers, property, and occupants of state property. The Department of the California Highway Patrol may also assist the department in the department's investigations conducted pursuant to subdivision (a).

14615.1. Where the Legislature directs or authorizes the department to maintain, develop, or prescribe processes, procedures, or policies in connection with the administration of its duties under this chapter, Chapter 2 (commencing with Section 14650), or Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code, the action by the department shall be exempt from the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500)). This section shall apply to actions taken by the department with respect to the State Administrative Manual and the State Contracting Manual.

14616. The director may exempt from his or her approval or from approval of the department any transactions involving not more than fifty thousand dollars (\$50,000) for which such approval is required by statute whenever, in his or her judgment, such exemption is appropriate and in the best interests of the state. Written notice of exemptions shall be given to the Controller.

CHAPTER 5. STATE RECORDS
ARTICLE 4. DISPOSAL OF RECORDS

14755. (a) No record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the director that the record has no further administrative, legal, or fiscal value and the Secretary of State has determined that the record is inappropriate for preservation in the State Archives.

(b) The director shall not authorize the destruction of any record subject to audit until he or she has determined that the audit has been performed.

(c) The director shall not authorize the destruction of all or any part of an agency rulemaking file subject to Section 11347.3.

14756. The public records of any state agency may be microfilmed, electronically data imaged, or otherwise photographically reproduced and certified upon the written authorization of the head of the agency. The microfilming, electronic data imaging, or photographic reproduction shall be made in compliance with the minimum standards or guidelines, or both, as recommended by the American National Standards Institute or the Association for Information and Image Management, and as adopted by the Department of General Services in consultation with the Secretary of State, for recording of permanent records or nonpermanent records.

The certification of each reproduction or set of reproductions shall be in accordance with the standards, or have the approval, of the Attorney General. The certification shall contain a statement of the identity, description, and disposition or location of the records reproduced, the date, reason, and authorization for the reproduction, and other information that the Attorney General requires.

The certified reproductions shall be deemed to be original public records for all purposes, including introduction in courts of law and state agencies.

CHAPTER 6. CALIFORNIA STATE CONTRACTS REGISTER

14825. The Department of General Services shall publish, or shall cause to be published, the California State Contracts Register, describing therein contracts proposed by the state.

As used in this article, "contract" means an agreement entered into by a state agency for services, which term shall be construed to include contracts for construction or alteration of state-owned real property.

Provisions of this article shall not apply to contracts for entertainment by district agricultural associations or for their fair related events except that summaries of the types of fair related contracts shall be published in the California State Contracts Register at least twice each year.

14825.1. The California State Contracts Register shall be published not less than twice a month and shall include information deemed appropriate by the Department of General Services, and shall include all of the following:

- (a) Contract identification number.
- (b) A description of the contract to be performed.
- (c) All deadlines for submitting bid proposals or other required steps in the contract process, including the location and estimated duration of the contract where appropriate.
- (d) Any eligibility requirements and preferences.
- (e) Department, name, and telephone number of the person or persons to contact for further bid and submittal information.

The department may make the register available to the general public electronically through a computer-accessed service.

14826. In order to broaden subcontracting opportunities for small business, agencies shall maintain and provide, upon request to interested parties, the names and addresses of firms to whom requests for proposals or invitations to bid are to be issued in connection with all contracts for one hundred thousand dollars (\$100,000) or more.

14827. State agencies shall develop procedures for assuring that proposed contract opportunities are published in the California State Contracts Register as required by this article.

14827.1. No state agency shall award a contract unless notice thereof has first been published in the California State Contracts Register.

14827.2. Every state agency shall furnish to the Department of General Services the information required by Section 14825.1 in sufficient time for it to be published in the California State Contracts Register, so as to give potential bidders not less than 10 working days' notice prior to the contract bid opening date. Agencies shall not release invitations for bid or requests for proposals prior to publication in the California State Contracts Register.

14827.3. The Department of General Services may exempt a state agency from the requirement of advertising in the California State Contracts Register where the contract is necessary for the immediate preservation of life or state property, where the contract is with another state agency or local and where the Director of General Services determines that the state's best interest would be better served by an exemption. The Department of General Services may, likewise, exempt a class or classes of contracts, where it appears to be in the state's best interest to do so. The department will identify the exemptions and publish them prominently in each issue of the California State Contracts Register.

14828. All governmental contracting entities shall provide to the Department of General Services which shall maintain, for review by those desiring the information, all of the following:

- (a) Names of contractors to whom specific contracts have been awarded.
- (b) Contract procedures and requirements.

14829. The Department of General Services shall offer copies of the California State Contracts Register for sale, and the "price" thereof shall not exceed the amount necessary to pay all expenses incurred in its preparation and distribution.

14829.1. The Department of General Services may adopt rules and regulations consistent with the law for the purpose of carrying into effect this article.

14829.2. This article shall remain in effect until January 1, 1988, and as of that date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends that date, or unless the Director of General Services determines that as of December 1, 1987, the programs established by this article are self-supporting and notifies the Joint Legislative Budget Committee of that determination.

CHAPTER 6.5. SMALL BUSINESS PROCUREMENT AND CONTRACT ACT
ARTICLE 1. GENERAL PROVISIONS

14835. This chapter shall be known and may be cited as the Small Business Procurement and Contract Act.

14836. (a) The Legislature hereby declares that it serves a public purpose, and it is of benefit to the state, to promote and facilitate the fullest possible participation by all citizens in the affairs of the State of California in every possible way. It is also essential that opportunity is provided for full participation in our free enterprise system by small business enterprises.

(b) Further, it is the declared policy of the Legislature that the state should aid, counsel, assist, and protect, to the maximum extent possible, the interests of small business concerns, including microbusinesses, in order to preserve free competitive enterprise and to ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the state be placed with these enterprises.

14837. As used in this chapter:

(a) "Department" means the Department of General Services.

(b) "Director" means the Director of General Services.

(c) "Manufacturer" means a business that is both of the following:

(1) Primarily engaged in the chemical or mechanical transformation of raw materials or processed substances into new products.

(2) Classified between Codes 2000 to 3999, inclusive, of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(d) (1) "Small business" means an independently owned and operated business that is not dominant in its field of operation, the principal office of which is located in California, the officers of which are domiciled in California, and that, together with affiliates, has 100 or fewer employees, and average annual gross receipts of ten million dollars (\$10,000,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 100 or fewer employees.

(2) "Microbusiness" is a small business that, together with affiliates, has average annual gross receipts of two million five hundred thousand dollars (\$2,500,000) or less over the previous three years, or is a manufacturer, as defined in subdivision (c), with 25 or fewer employees.

(3) The director shall conduct a biennial review of the average annual gross receipt levels specified in this subdivision and may adjust that level to reflect changes in the California Consumer Price Index for all items. To reflect unique variations or characteristics of different industries, the director may establish, to the extent necessary, either higher or lower qualifying standards than those specified in this subdivision, or alternative standards based on other applicable criteria.

(4) Standards applied under this subdivision shall be established by regulation, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2, and shall preclude the qualification of businesses that are dominant in their industry.

In addition, the standards shall provide that the certified small business or microbusiness shall provide goods or services that contribute to the fulfillment of the contract requirements by performing a commercially useful function, as defined below:

(A) A certified small business or microbusiness is deemed to perform a commercially useful function if the business does all of the following:

(i) (I) Is responsible for the execution of a distinct element of the work of the contract.

(ii) (II) Carries out its obligation by actually performing, managing, or supervising the work involved.

(iii) (III) Performs work that is normal for its business services and functions.

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

(B) A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of small business or microbusiness participation.

(e) "Disabled veteran business enterprise" means an enterprise that has been certified as meeting the qualifications established by subdivision (g) of Section 999 of the Military and Veterans Code.

14838. In order to facilitate the participation of small business, including microbusiness, in the provision of goods, information technology, and services to the state, and in the construction (including alteration, demolition, repair, or improvement) of state facilities, the directors of General Services and other state agencies that enter those contracts, each within their respective areas of responsibility, shall do all of the following:

(a) Establish goals, consistent with those established by the Office of Small Business Certification and Resources, for the extent of participation of small businesses, including microbusinesses, in the provision of goods, information technology, and services to the state, and in the construction of state facilities.

(b) Provide for small business preference, or nonsmall business preference for bidders that provide for small business and microbusiness subcontractor participation, in the award of contracts for goods, information technology, services, and construction, as follows:

(1) In solicitations where an award is to be made to the lowest responsible bidder meeting specifications, the preference to small business and microbusiness shall be 5 percent of the lowest responsible bidder meeting specifications. The preference to nonsmall business bidders that provide for small business or microbusiness subcontractor participation shall be, up to a maximum of 5 percent of the lowest responsible bidder meeting specifications, determined according to rules and regulations established by the Department of General Services.

(2) In solicitations where an award is to be made to the highest scored bidder based on evaluation factors in addition to price, the preference to small business or microbusiness shall be 5 percent of the highest responsible bidder's total score. The preference to nonsmall business bidders that provide for small business or microbusiness subcontractor participation shall be up to a maximum 5 percent of the highest responsible bidder's total score, determined according to rules and regulations established by the Department of General Services.

(3) The preferences under paragraphs (1) and (2) may not be awarded to a noncompliant bidder and may not be used to achieve any applicable minimum requirements.

(4) The preference under paragraph (1) may not exceed fifty thousand dollars (\$50,000) for any bid, and the combined cost of preferences granted pursuant to paragraph (1) and any other provision of law may not exceed one hundred thousand dollars (\$100,000). In bids in which the state has reserved the right to make multiple awards, this fifty thousand dollar (\$50,000) maximum preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of small businesses, including microbusiness, in the contract award.

(c) Give special consideration to small businesses and microbusinesses by both:

(1) Reducing the experience required.

(2) Reducing the level of inventory normally required.

(d) Give special assistance to small businesses and microbusinesses in the preparation and submission of the information requested in Section 14310.

(e) Under the authorization granted in Section 10163 of the Public Contract Code, make awards, whenever feasible, to small business and microbusiness bidders for each project bid upon within their prequalification rating. This may be accomplished by dividing major projects into subprojects so as to allow a small business or microbusiness contractor to qualify to bid on these subprojects.

(f) Small business and microbusiness bidders qualified in accordance with the provisions of this chapter shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible under this provision or any

other provision of law shall not result in the denial of the award to a small business or microbusiness bidder. In the event of a precise tie between the low responsible bid of a bidder meeting specifications of a small business or microbusiness, and the low responsible bid of a bidder meeting the specifications of a disabled veteran-owned small business or microbusiness, the contract shall be awarded to the disabled veteran-owned small business or microbusiness. This provision applies if the small business or microbusiness bidder is the lowest responsible bidder, as well as if the small business or microbusiness bidder is eligible for award as the result of application of the small business and microbusiness bidder preference granted by subdivision (b).

14838.2. The Legislature finds and declares all of the following:

(a) Market demand is a driving factor in determining profitability of California companies and the ability of those companies to invest in business growth.

(b) Recent unemployment figures indicate that California's employment has declined by more than 420,000 jobs since the middle of 1990, with up to 133,000 of those jobs in the manufacturing sector.

(c) The current economic recession, coupled with losses of federal contracts by our defense and aerospace industries, is causing an economic crisis in California.

(d) California companies are often at a competitive disadvantage when responding to public contract proposals from government agencies because of factors associated with higher taxes, wages, rents, labor benefits, and insurance rates.

(e) The competitiveness of California companies is also impacted as a result of in-state business preference policies that exist in other states.

14838.4. No small business preference shall be allowed if allowing the small business preference would result in a computed bid of the preference recipient which would exceed the amount of funds appropriated by the Legislature for the construction project, plus any augmentation that may be made by the State Public Works Board pursuant to authority granted in the annual Budget Act.

14838.5. (a) Notwithstanding the advertising, bidding, and protest provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 2 (commencing with Section 10290) and Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for the acquisition of goods, services, or information technology that has an estimated value of greater than five thousand dollars (\$5,000), but less than one hundred thousand dollars (\$100,000), to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, as long as the agency obtains price quotations from two or more certified small businesses, including microbusinesses, or from two or more disabled veterans business enterprises.

(b) In carrying out subdivision (a), state agencies shall consider a responsive offer timely received from a responsible certified small business, including a microbusiness, or from a disabled veteran business enterprise.

(c) If the estimated cost to the state is less than five thousand dollars (\$5,000) for the acquisition of goods, services, or information technology, or a greater amount as administratively established by the director, a state agency shall obtain at least two price quotations from responsible suppliers whenever there is reason to believe a response from a single source is not a fair and reasonable price.

14838.7. (a) Notwithstanding the advertising and bidding provisions of Chapter 6 (commencing with Section 14825) of this code and Chapter 1 (commencing with Section 10100) of Part 2 of Division 2 of the Public Contract Code, a state agency may award a contract for construction, including the erection, construction, alteration, repair, or improvement of any state structure,

building, road, or other state improvement of any kind that has an estimated value of greater than five thousand dollars (\$5,000) but less than the cost limit, as specified in subdivision (b) of Section 10105 of the Public Contract Code, to a certified small business, including a microbusiness, or to a disabled veteran business enterprise, as long as the agency obtains written bid submittals from two or more certified small businesses, including microbusinesses, or from two or more disabled veteran business enterprises.

(b) In implementing subdivision (a), state agencies shall consider a responsive offer timely received from a responsible certified small business, including a microbusiness, or from a disabled veteran business enterprise.

(c) If the estimated cost to the state is less than five thousand dollars (\$5,000) for the public work construction project, a state agency shall obtain at least two written bid submittals from responsible contractors whenever there is reason to believe a response from a single source is not a fair and reasonable price.

14839. There is hereby established within the department the Office of Small Business and Disabled Veteran Business Enterprise Services.

The duties of the office shall include:

(a) Compiling and maintaining a comprehensive bidders list of qualified small businesses and disabled veteran business enterprises, and noting which small businesses also qualify as microbusinesses.

(b) Coordinating with the Federal Small Business Administration, the Minority Business Development Agency, and the Office of Small Business Development of the Department of Economic and Business Development.

(c) Providing technical and managerial aids to small businesses, microbusinesses, and disabled veteran business enterprises, by conducting workshops on matters in connection with government procurement and contracting.

(d) Assisting small businesses, microbusinesses, and disabled veteran business enterprises, in complying with the procedures for bidding on state contracts.

(e) Working with appropriate state, federal, local, and private organizations and business enterprises in disseminating information on bidding procedures and opportunities available to small businesses, microbusinesses, and disabled veteran business enterprises.

(f) Making recommendations to the department and other state agencies for simplification of specifications and terms in order to increase the opportunities for small business, microbusiness, and disabled veteran business enterprise participation.

(g) Develop, by regulation, other programs and practices that are reasonably necessary to aid and protect the interest of small businesses, microbusinesses, and disabled veteran business enterprises in contracting with the state.

(h) The information furnished by each contractor requesting a small business or microbusiness preference shall be under penalty of perjury.

14839.1. The department shall have sole responsibility for certifying and determining the eligibility of small businesses and microbusinesses under this chapter.

14840. The department shall submit an annual report to the Legislature no later than January 1 of each year containing the following information:

(a) Upon request, an up-to-date list of eligible small business bidders by general procurement and construction contract categories, noting company names and addresses and also noting which small businesses also qualify as microbusinesses.

(b) By general procurement and construction contract categories, statistics comparing the small business and microbusiness contract participation dollars to the total state contract participation dollars.

(c) By awarding department and general procurement and construction categories, statistics comparing the small business and microbusiness contract participation dollars to the total state contract participation dollars.

(d) Any recommendations for changes in statutes or state policies to improve opportunities for small businesses and microbusinesses.

(e) A statistical summary of small businesses and microbusinesses certified for state contracting by the number of employees at the business for each of the following categories: 0-25, 26-50, 51-75, and 76-100.

(f) To the extent feasible, beginning in the year 2002, the number of contracts awarded by the department in the categories specified in subdivision (e).

(g) The number of contracts and dollar amounts awarded annually pursuant to Section 14838.5 to small businesses, microbusinesses, and disabled veteran business enterprises.

14842. (a) A business that has obtained classification as a small business or microbusiness by reason of having furnished incorrect supporting information or by reason of having withheld information, and that knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for classification, and that by reason of that classification has been awarded a contract to which it would not otherwise have been entitled, shall do all of the following:

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

(2) In addition to the amount described in subdivision (a), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(3) Be ineligible to transact any business with the state either directly as a prime contractor or indirectly as a subcontractor, for a period of not less than three months and not more than 24 months. State agencies may reject the bid of a supplier offering goods, information technology, or services manufactured or provided by a subcontractor if that subcontractor has been declared ineligible to transact any business with the state under this chapter, even though the bidder is a business in good standing.

(b) All payments to the state pursuant to paragraph (1) of subdivision (a) shall be deposited in the fund out of which the contract involved was awarded.

(c) All payments to the state pursuant to paragraph (2) of subdivision (a) shall be deposited in the state General Fund.

(d) The small business certification of a business found to have violated the provisions of subdivision (a) shall be revoked for a period of not less than one year. For an additional or subsequent violation, the period of certification revocation or suspension shall be extended for a period of up to three years. The revocation shall apply to the principals of the business and any subsequent businesses formed by those principals.

(e) Prior to the imposition of any sanctions under this article, a business shall be entitled to a public hearing and to at least five working days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

14842.5. (a) It shall be unlawful for a person to do any of the following:

(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, certification as a small business or microbusiness enterprise for the purposes of this chapter.

(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 certification or denial of certification of any entity as a small business or microbusiness 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 that has requested certification as a small business or microbusiness enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this chapter.

(5) Knowingly and with intent to defraud, fraudulently represent certified small business or microbusiness participation in order to obtain or retain a bid preference or a state contract.

(6) Knowingly and with intent to defraud, fraudulently represent that a commercially useful function is being performed by a certified small business or microbusiness in order to obtain or retain a bid preference or a state contract.

(b) Any person who is found by the department to have violated any of the provisions of subdivision (a) is subject to a civil penalty of not more than five thousand dollars (\$5,000).

(c) Any person who violates subdivision (a) shall, if certified as a small business or a microbusiness, have the business' certification revoked for a period of not more than one year, and shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as a contractor, a subcontractor, or a supplier in, any state contract or project for a period of not less than three months nor more than 24 months. However, for an additional or subsequent violation, the period of certification revocation or suspension shall be extended for a period of up to three years. The certification revocation shall apply to the principals of the business and any subsequent businesses formed by those principals. Any business or person who 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) If a contractor, subcontractor, supplier, subsidiary, or affiliate thereof, has been found by the department to have violated subdivision (a) and that violation occurred within three years of another violation of subdivision (a) found by the department, the department shall prohibit that contractor, subcontractor, supplier, subsidiary, or affiliate thereof, from entering into a state project or state contract and from further bidding to a state entity, and from being a subcontractor to a contractor for a state entity and from being a supplier to a state entity.

14843. The department may make all rules and regulations consistent with the law for the purpose of carrying into effect the provisions of this chapter. Rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1.

ARTICLE 2. SMALL BUSINESS ADVOCACY

14845. Using existing resources, the Department of General Services' small business advocate shall, at a minimum, provide the following services:

(a) Assist small businesses by providing information regarding all of the following:

(1) Identification of potential small business subcontractors and potential subcontracting opportunities.

(2) Solicitation protest procedures and timelines.

(3) Prompt payment procedures.

(b) Using existing resources, develop and maintain an outreach and education program to assist small businesses to establish the California multiple award schedule. The department shall actively promote the availability of small business suppliers to deliver or provide a broad range of goods and services to governmental agencies through their participation in the California multiple award schedule program established pursuant to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and other types of contracts established by state agencies for repetitively used and commonly needed goods and services.

(c) Whenever the director consolidates the needs of multiple state agencies and establishes a contract for repetitively purchased or commonly needed goods or services, the director shall both encourage bidders to utilize small business suppliers and subcontractors, and utilize multiple award methods whenever practicable to further ensure that a fair proportion of needed goods and services are obtained from small businesses.

(d) Using existing resources, establish a training and development program for acquisition professionals, including methods for structuring solicitations to enhance the participation of small businesses in state contracting.

(e) Using existing resources, the department shall establish a recognition and awards program for state employees who make an outstanding contribution to the state's overall effort to increase the level of small business participation in state contracting.

(f) Prepare, and make available to the public, a directory of certified small business suppliers.

(g) In its review of state agency acquisitions, the department, as applicable, shall identify areas where improvements in the level of participation of small businesses in state contracting can be achieved.

14846. (a) (1) Using existing resources, each state agency shall consolidate its existing staff functions that relate to contract opportunities for small business into a single point of contact for small businesses and designate a small business advocate as a liaison to small business suppliers.

(2) Each small business advocate shall, at a minimum, provide for both of the following:

(A) Make information regarding pending solicitations available to, and consider offers from, California small business suppliers capable of meeting the state's business need, and who have registered with the state for this purpose.

(B) Ensure that payments due on a contract with a small business are made promptly, as provided for in Section 926.15 or 927, whichever applies.

(3) This subdivision shall not apply to state agencies whose contracting expenditures total less than one hundred thousand dollars (\$100,000) annually.

(b) Prior to placing orders under the California multiple awards schedule program, state agencies shall first consider offers from small businesses that have established multiple award schedules whenever practicable.

(c) State agencies shall identify and implement innovative acquisition operating processes, including payment processes, and strategies for small business participation. To maximize the benefits, state agencies shall actively share information about these innovative processes with other state agencies.

(d) State agencies shall prepare solicitations, and any related bid submission requirements, in a manner consistent with the scope, complexity, and anticipated cost of the acquisition. Where appropriate, state agencies shall provide bidders with simplified and streamlined tools and methods for responding to solicitations that allow bidders to efficiently, expeditiously, and cost-effectively respond to the contracting opportunity.

14847. (a) In determining eligibility of a business for an award, state agencies may consider all of the following:

(1) Whether the bidder has the necessary facilities, organizational capability, experience, managerial and technical competency and skills, and financial resources to fulfill the terms of the contract.

(2) Whether the bidder has the capability to comply with the required delivery or performance schedule, taking into consideration other business commitments.

(3) Whether the bidder has a history of satisfactory or better performance, as demonstrated by a results-oriented track record, written performance evaluations, or other relevant information obtained from references.

(b) State agencies may enter into contracts with multiple sources when in the best interests of the state.

(c) The Department of General Services shall establish procedures and guidelines for the implementation of this article.

CHAPTER 8. TRAFFIC

14920. (a) The Department of General Services provides for the specialized consideration of all traffic problems of the state; develops specialized knowledge of rates, tariffs, and traffic problems to the end that all state shipments be accomplished in the most expeditious, economical, and efficient manner possible via carrier or carriers whose drivers and supporting personnel are operating under current collective-bargaining agreements or who are maintaining the prevailing wages, standards and conditions of employment for its driver and supporting personnel employees; insures adequate state representation before administrative rate-setting bodies; disseminates traffic information throughout all state agencies.

(b) In establishing procedures for obtaining commercial moving services under competitive bid contracts the department shall act in accordance with the following:

Every contract (and any bid specification therefor) hereby authorized and entered into by the state in excess of two thousand five hundred dollars (\$2,500), the principal purpose of which is to furnish commercial moving services to relocate state offices, facilities and institutions, shall specify that no contractor performing thereunder shall pay any employee actually engaged in the moving or handling of goods being relocated under such contract less than the prevailing wage rate, except consideration may be given to bids not conforming with these employee cost provisions in areas where no such employee wage standards and conditions are reasonably available. The term "prevailing wage rate," as used in this subdivision, means the rate paid to a majority of workmen engaged in the particular craft, classification or type of work within the locality if a majority of such workmen be paid at a single rate; if there be no single rate being paid to a majority, then the rate being paid the greater number. The determination required by this subdivision of wage rates prevailing in a given area shall be made by the Department of Industrial Relations.

(c) The term "supporting personnel" for the purposes of this chapter shall include all employees of a carrier who directly participate in the actual moving and handling of goods.

The amendments to this section during the 1975-76 Regular Session, shall not apply to any contract, including those that may be renewed periodically, which affects the wage rates of supporting personnel until the end of the renewal period or the end of the contract, whichever first occurs.

14921. The director, subject to the State Civil Service Act, shall appoint such personnel as is necessary to perform the following duties:

(a) Watch the movements of all state freight.

(b) Audit all freight and other transportation bills involving state shipments in order to determine the most advantageous and economical shipping rates which can be secured via carrier or carriers whose drivers and supporting personnel are operating under current collective-bargaining agreements or who are maintaining the prevailing wages, standards and conditions of employment for its driver and supporting personnel employees and to determine what refunds may be due the state on completed shipments.

(c) Furnish upon request from any state source the proper routing and tariff description of a given shipment in order to assure the state of the lowest applicable freight charge commensurate with the provisions of Section 14920.

(d) Establish and maintain such files as may be necessary to expedite shipments, secure special movements, trace and recover strayed and delayed shipments, and divert and reconsign shipments.

(e) Perform such other duties as may be necessary to the efficient discharge of the rate control function.

The amendments to this section during the 1975-76 Regular Session, shall not apply to any contract, including those that may be renewed periodically, which affects the wage rates of supporting personnel until the end of the renewal period or the end of the contract, whichever first occurs.

14922. Upon request of any state agency, the Director of General Services may assign competent personnel to work directly with such state agency at such locations as the agency shall designate in order that such personnel shall become familiar with the particular problems of such agency and that the purposes of this chapter can be best accomplished.

DIVISION 5. PERSONNEL
PART 2. CIVIL SERVICE
CHAPTER 5. APPOINTMENTS
ARTICLE 4. PERSONAL SERVICES CONTRACTS

19130. The purpose of this article is to establish standards for the use of personal services contracts.

(a) Personal services contracting is permissible to achieve cost savings when all the following conditions are met:

(1) The contracting agency clearly demonstrates that the proposed contract will result in actual overall cost savings to the state, provided that:

(A) In comparing costs, there shall be included the state's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there shall not be included the state's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed in state service. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing state costs that would be directly associated with the contracted function. These continuing state costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

(2) Proposals to contract out work shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Proposals to contract out work shall be eligible for approval if the contractor's wages are at the industry's level and do not significantly undercut state pay rates.

(3) The contract does not cause the displacement of civil service employees. The term "displacement" includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. Displacement does not include changes in shifts or days off, nor does it include reassignment to other positions within the same class and general location.

(4) The contract does not adversely affect the state's affirmative action efforts.

(5) The savings shall be large enough to ensure that they will not be eliminated by private sector and state cost fluctuations that could normally be expected during the contracting period.

(6) The amount of savings clearly justify the size and duration of the contracting agreement.

(7) The contract is awarded through a publicized, competitive bidding process.

(8) The contract includes specific provisions pertaining to the qualifications of the staff that will perform the work under the contract, as well as assurance that the contractor's hiring practices meet applicable nondiscrimination, affirmative action standards.

(9) The potential for future economic risk to the state from potential contractor rate increases is minimal.

(10) The contract is with a firm. A "firm" means a corporation, partnership, nonprofit organization, or sole proprietorship.

(11) The potential economic advantage of contracting is not outweighed by the public's interest in having a particular function performed directly by state government.

(b) Personal services contracting also shall be permissible when any of the following conditions can be met:

(1) The functions contracted are exempted from civil service by Section 4 of Article VII of the California Constitution, which describes exempt appointments.

(2) The contract is for a new state function and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(3) The services contracted are not available within civil service, cannot be performed satisfactorily by civil service employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the civil service system.

(4) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as "service agreements," shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(5) The legislative, administrative, or legal goals and purposes cannot be accomplished through the utilization of persons selected pursuant to the regular civil service system. Contracts are permissible under this criterion to protect against a conflict of interest or to insure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(6) The nature of the work is such that the Government Code standards for emergency appointments apply. These contracts shall conform with Article 8 (commencing with Section 19888) of Chapter 2.5 of Part 2.6.

(7) State agencies need private counsel because a conflict of interest on the part of the Attorney General's office prevents it from representing the agency without compromising its position. These contracts shall require the written consent of the Attorney General, pursuant to Section 11040.

(8) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the state in the location where the services are to be performed.

(9) The contractor will conduct training courses for which appropriately qualified civil service instructors are not available, provided that permanent instructor positions in academies or similar settings shall be filled through civil service appointment.

(10) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under civil service would frustrate their very purpose.

(c) All persons who provide services to the state under conditions the board determines constitute an employment relationship shall, unless exempted from civil service by Section 4 of Article VII of the California Constitution, be retained under an appropriate civil service appointment.

19131. Any state agency proposing to execute a contract pursuant to subdivision (a) of Section 19130 shall notify the State Personnel Board of its intention. All organizations that represent state employees who perform the type of work to be contracted, and any person or organization which has filed with the board a request for notice, shall be contacted immediately by the State Personnel Board upon receipt of this notice so that they may be given a reasonable opportunity to comment on the proposed contract. Departments or agencies submitting proposed contracts shall retain and provide all data and other information relevant to the contracts and necessary for a specific application of the standards set forth in subdivision (a) of Section 19130. Any employee organization may request, within 10 days of notification, the State Personnel Board to review any contract proposed or executed pursuant to subdivision (a) of Section 19130. The review shall be conducted in accordance with subdivision (b) of Section 10337 of the Public Contract Code. Upon such a request, the State Personnel Board shall review the contract for compliance with the standards specified in subdivision (a) of Section 19130.

19132. The State Personnel Board, at the request of an employee organization that represents state employees, shall review the adequacy of any proposed or executed contract which is of a type enumerated in subdivision (b) of Section 19130. The review shall be conducted in accordance with subdivision (c) of Section 10337 of the Public Contract Code. However, a

contract that was reviewed at the request of an employee organization when it was proposed need not be reviewed again after its execution.

19133. (a) Any state agency may enter into an agreement with any public or private institution of higher education in California, nonprofit campus foundation, or state higher education foundation to provide part-time employment to students attending a public or private institution of higher education that contracts with the state agency, or to students attending a public or private institution which is affiliated with a nonprofit campus foundation, or a state higher education foundation, that contracts with a state agency, in work related to the field of study of the student.

(b) Notwithstanding any other provision of law to the contrary, no student employed pursuant to this section shall do any of the following:

(1) Accrue state civil service status.

(2) Be employed for more than 194 days in the 365 days following the initial date of employment.

(3) Cause the displacement of civil service employees.

(c) "Displacement," for the purposes of this section, includes layoffs, demotions, involuntary transfers to a new class, involuntary transfers to a new location requiring a change of residence, and time-based reductions. "Displacement," for the purposes of this section, shall not include changes in shifts or days off nor shall it include reassignment to other positions within the same class and general location.

19134. (a) Personal services contracts entered into by a state agency in accordance with Section 19130 for persons providing janitorial and housekeeping services, custodians, food service workers, laundry workers, window cleaners, and security guard services shall include provisions for employee wages and benefits that are valued at least 85 percent of the state employer cost of wages and benefits provided to state employees for performing similar duties.

(b) For purposes of this section, "benefits" includes "health, dental, retirement, and vision benefits, and holiday, sick, and vacation pay."

(c) (1) The Department of Personnel Administration shall establish annually the state employer wage and benefit costs for workers covered pursuant to this section.

(2) Benefit costs shall be established using rates based on single employee, employee plus one dependent, and employee plus two or more dependents, or the costs may be based on a blended rate, subject to the determination of the Department of Personnel Administration.

(d) In lieu of providing actual benefits, contractors may comply with this section by a cash payment to employees equal to the applicable determination under subdivision (c).

(e) Failure to provide benefits or cash-in-lieu to employees as required under this section shall be deemed to be a material breach for any contract for personal services covered by this section.

(f) The Department of General Services and the Department of Personnel Administration may adopt guidelines and regulations to implement the requirements of this section.

(g) This section applies to all contracts exceeding 90 days.

(h) Holiday pay shall be provided to employees of contractors providing services specified in subdivision (a) on any state holiday that the state facility in which the services are being provided is closed.

(i) This section shall also apply to wages and benefits of employees of subcontractors providing services specified in subdivision (a) in state-leased facilities where the facility is at least 50,000 square feet in area and the state leases all of the occupied floorspace of the facility.

DIVISION 4. FISCAL AFFAIRS
PART 2.6. PERSONNEL ADMINISTRATION
CHAPTER 2.5. DAYS AND HOURS OF WORK
ARTICLE 10. ACTIVITIES

19990. A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as a state officer or employee.

Each appointing power shall determine, subject to approval of the department, those activities which, for employees under its jurisdiction, are inconsistent, incompatible or in conflict with their duties as state officers or employees. Activities and enterprises deemed to fall in these categories shall include, but not be limited to, all of the following:

- (a) Using the prestige or influence of the state or the appointing authority for the officer's or employee's private gain or advantage or the private gain of another.
- (b) Using state time, facilities, equipment, or supplies for private gain or advantage.
- (c) Using, or having access to, confidential information available by virtue of state employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.
- (d) Receiving or accepting money or any other consideration from anyone other than the state for the performance of his or her duties as a state officer or employee.
- (e) Performance of an act in other than his or her capacity as a state officer or employee knowing that the act may later be subject, directly or indirectly to the control, inspection, review, audit, or enforcement by the officer or employee.
- (f) Receiving or accepting, directly or indirectly, any gift, including money, or any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee.
- (g) Subject to any other laws, rules, or regulations as pertain thereto, not devoting his or her full time, attention, and efforts to his or her state office or employment during his or her hours of duty as a state officer or employee.

The department shall adopt rules governing the application of this section. The rules shall include provision for notice to employees prior to the determination of proscribed activities and for appeal by employees from such a determination and from its application to an employee. Until the department adopts rules governing the application of this section, as amended in the 1985 - 86 Regular Session of the Legislature, existing procedures shall remain in full force and effect.

If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except that if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

TITLE 9. POLITICAL REFORM
CHAPTER 7. CONFLICTS OF INTEREST
ARTICLE 4. DISQUALIFICATION OF FORMER STATE OFFICERS AND EMPLOYEES

87400. Unless the contrary is stated or clearly appears from the context, the definitions set forth in this section shall govern the interpretation of this article.

- (a) "State administrative agency" means every state office, department, division, bureau, board and commission, but does not include the Legislature, the courts or any agency in the judicial branch of government.

(b) "State administrative official" means every member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity.

(c) "Judicial, quasi-judicial or other proceeding" means any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency, including but not limited to any proceeding governed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

(d) "Participated" means to have taken part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee, but excluding approval, disapproval or rendering of legal advisory opinions to departmental or agency staff which do not involve a specific party or parties.

87401. No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

(a) The State of California is a party or has a direct and substantial interest.

(b) The proceeding is one in which the former state administrative official participated.

87402. No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.

87403. The prohibitions contained in Sections 87401 and 87402 shall not apply:

(a) To prevent a former state administrative official from making or providing a statement, which is based on the former state administrative official's own special knowledge in the particular area that is the subject of the statement, provided that no compensation is thereby received other than that regularly provided for by law or regulation for witnesses; or

(b) To communications made solely for the purpose of furnishing information by a former state administrative official if the court or state administrative agency to which the communication is directed makes findings in writing that:

(1) The former state administrative official has outstanding and otherwise unavailable qualifications;

(2) The former state administrative official is acting with respect to a particular matter which requires such qualifications; and

(3) The public interest would be served by the participation of the former state administrative official; or

(c) With respect to appearances or communications in a proceeding in which a court or state administrative agency has issued a final order, decree, decision or judgment but has retained jurisdiction if the state administrative agency of former employment gives its consent by determining that:

(1) At least five years have elapsed since the termination of the former state administrative official's employment or term of office; and

(2) The public interest would not be harmed.

87404. Upon the petition of any interested person or party, the court or the presiding or other officer, including but not limited to a hearing officer serving pursuant to Section 11512 of the Government Code, in any judicial, quasi-judicial or other proceeding, including but not limited to any proceeding pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code may, after notice and an opportunity for a hearing, exclude any person found to be in violation of this article from further participation, or from assisting or counseling any other participant, in the proceeding then pending before such court or presiding or other officer.

87405. The requirements imposed by this article shall not apply to any person who left government service prior to the effective date of this article except that any such person who returns to government service on or after the effective date of this article shall thereafter be covered thereby.

87406. (a) This section shall be known, and may be cited, as the Milton Marks Postgovernment Employment Restrictions Act of 1990.

(b) No Member of the Legislature, for a period of one year after leaving office, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written communication, before the Legislature, any committee or subcommittee thereof, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.

(c) No elected state officer, other than a Member of the Legislature, for a period of one year after leaving office, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or any officer or employee thereof, if the appearance or communication is for the purpose of influencing administrative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this subdivision, an appearance before a "state administrative agency" does not include an appearance in a court of law, before an administrative law judge, or before the Workers' Compensation Appeals Board.

(d) (1) No designated employee of a state administrative agency, any officer, employee, or consultant of a state administrative agency who holds a position which entails the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, and no member of a state administrative agency, for a period of one year after leaving office or employment, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office or employment, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. For purposes of this paragraph, an appearance before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Workers' Compensation Appeals Board. The prohibition of this paragraph shall only apply to designated employees employed by a state administrative agency on or after January 7, 1991.

(2) For purposes of paragraph (1), a state administrative agency of a designated employee of the Governor's office includes any state administrative agency subject to the direction and control of the Governor.

(e) The prohibitions contained in subdivisions (b), (c), and (d) shall not apply to any individual subject to this section who is or becomes any of the following:

(1) An officer or employee of another state agency, board, or commission if the appearance or communication is for the purpose of influencing legislative or administrative action on behalf of the state agency, board, or commission.

(2) An official holding an elective office of a local government agency if the appearance or communication is for the purpose of influencing legislative or administrative action on behalf of the local government agency.

(f) This section shall become operative on January 1, 1991, but only if Senate Constitutional Amendment No. 32 of the 1989-90 Regular Session is approved by the voters. With respect to Members of the Legislature whose current term of office on January 1, 1991, began in December 1988, this section shall not apply until January 1, 1993.

87406.1. (a) For purposes of this section, "district" means an air pollution control district or air quality management district and "district board" means the governing body of an air pollution control district or an air quality management district.

(b) No former member of a district board, and no former officer or employee of a district who held a position which entailed the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, shall, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that district board, or any committee, subcommittee, or present member of that district board, or any officer or employee of the district, if the appearance or communication is made for the purpose of influencing regulatory action.

(c) Subdivision (b) shall not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of another district or an employee or representative of a public agency.

(d) This section applies to members and former members of district hearing boards.

87407. No public official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.

Business and Professions Code

DIVISION 3. PROFESSIONS AND VOCATIONS GENERALLY CHAPTER 7. PROFESSIONAL ENGINEERS ARTICLE 1. GENERAL PROVISIONS

6706.3. Any reference in any law or regulation to a registered engineer, or to a registered civil, electrical, or mechanical engineer, is deemed to refer to a licensed engineer, or to a licensed civil, electrical, or mechanical engineer, as the case may be.

ARTICLE 3. APPLICATION OF THIS CHAPTER (CHAPTER 7)

6732. It is unlawful for anyone other than a professional engineer licensed under this chapter to stamp or seal any plans, specifications, plats, reports, or other documents with the seal or stamp of a professional engineer, or in any manner, use the title "professional engineer," "licensed engineer," "registered engineer," or "consulting engineer," or any of the following branch titles: "agricultural engineer," "chemical engineer," "civil engineer," "control system engineer," "electrical engineer," "fire protection engineer," "industrial engineer," "mechanical engineer," "metallurgical engineer," "nuclear engineer," "petroleum engineer," or "traffic engineer," or any combination of these words and phrases or abbreviations thereof unless licensed under this chapter.

6732.3. (a) Any person who has received from the board a registration or license in corrosion, manufacturing, quality, or safety engineering, and who holds a valid registration or license to practice professional engineering under this chapter, may continue to use the branch title of the branch in which the professional engineer is legally registered. A person holding a registration in corrosion, manufacturing, quality, or safety engineering is subject to the registration or license renewal provisions of this chapter.

(b) The professional engineer also may continue to use the title of "professional engineer," "licensed engineer," "registered engineer," or "consulting engineer."

6732.4. (a) Notwithstanding any other provision of law, any person who has applied for registration as a corrosion, quality, or safety engineer, and who has completed the written examination in one or more of these branch titles prior to January 1, 1999, shall be issued a registration in the branch title for which the applicant was examined, provided that he or she has met all other qualifications for registration. The board shall not administer any examination for registration as a corrosion, quality, or safety engineer on or after January 1, 1999.

(b) Notwithstanding any other provision of law, any person who has applied for registration as a manufacturing engineer, and who has completed the written examination for this branch title prior to January 1, 2004, shall be issued a registration as a manufacturing engineer, provided that he or she has met all other qualifications for registration. The board shall not administer any examination for registration as a manufacturing engineer on or after January 1, 2004.

CHAPTER 9. CONTRACTORS ARTICLE 2. APPLICATION OF CHAPTER

7028.7. If upon inspection or investigation, either upon complaint or otherwise, the registrar has probable cause to believe that a person is acting in the capacity of or engaging in the business of a contractor or salesperson within this state without having a license or registration in good standing to so act or engage, and the person is not otherwise exempted from this chapter, the registrar shall issue a citation to that person. Within 72 hours of receiving notice that a public

entity is intending to award, or has awarded, a contract to an unlicensed contractor, the registrar shall give written notice to the public entity that a citation may be issued if a contract is awarded to an unlicensed contractor. If after receiving the written notice from the registrar that the public entity has awarded or awards the contract to an unlicensed contractor, the registrar may issue a citation to the responsible officer or employee of the public entity as specified in Section 7028.15. Each citation shall be in writing and shall describe with particularity the basis of the citation. Each citation shall contain an order of abatement and an assessment of a civil penalty in an amount not less than two hundred dollars (\$200) nor more than fifteen thousand dollars (\$15,000). With the approval of the Contractors' State License Board, the registrar shall prescribe procedures for the issuance of a citation under this section. The Contractors' State License Board shall adopt regulations covering the assessment of a civil penalty that shall give due consideration to the gravity of the violation, and any history of previous violations. The sanctions authorized under this section shall be separate from, and in addition to, all other remedies either civil or criminal.

ARTICLE 5. LICENSING

7071.17. (a) Notwithstanding any other provision of law, the board shall require, as a condition precedent to accepting an application or licensure, renewal, reinstatement, or to change officers or other personnel of record, that an applicant, previously found to have failed or refused to pay a contractor, subcontractor, consumer, materials supplier, or employee based on an unsatisfied final judgment, file or have on file with the board a bond sufficient to guarantee payment of an amount equal to the unsatisfied final judgment or judgments. The applicant shall have 90 days from the date of notification by the board to file the bond or the application shall become void and the applicant shall reapply for issuance, reinstatement, or reactivation of a license. The board may not issue, reinstate, or reactivate a license until the bond is filed with the board. The bond required by this section is in addition to the contractor's bond. The bond shall be on file for a minimum of one year, after which the bond may be removed by submitting proof of satisfaction of all debts. The applicant may provide the board with a notarized copy of any accord, reached with any individual holding an unsatisfied final judgment, to satisfy a debt in lieu of filing the bond. The board shall include on the license application for issuance, reinstatement, or reactivation, a statement, to be made under penalty of perjury, as to whether there are any unsatisfied judgments against the applicant on behalf of contractors, subcontractors, consumers, materials suppliers, or the applicant's employees. Notwithstanding any other provision of law, if it is found that the applicant falsified the statement then the license will be retroactively suspended to the date of issuance and the license will stay suspended until the bond, satisfaction of judgment, or notarized copy of any accord applicable under this section is filed.

(b) Notwithstanding any other provision of law, all licensees shall notify the registrar in writing of any unsatisfied final judgment imposed on the licensee. If the licensee fails to notify the registrar in writing within 90 days, the license shall be automatically suspended on the date that the registrar is informed, or is made aware of the unsatisfied final judgment. The suspension shall not be removed until proof of satisfaction of the judgment, or in lieu thereof, a notarized copy of an accord is submitted to the registrar. If the licensee notifies the registrar in writing within 90 days of the imposition of any unsatisfied final judgment, the licensee shall, as a condition to the continual maintenance of the license, file or have on file with the board a bond sufficient to guarantee payment of an amount equal to all unsatisfied judgments applicable under this section. The licensee has 90 days from date of notification by the board to file the bond or at the end of the 90 days the license shall be automatically suspended. In lieu of filing the bond required by this section, the licensee may provide the board with a notarized copy of any accord reached with any individual holding an unsatisfied final judgment.

(c) By operation of law, failure to maintain the bond or failure to abide by the accord shall result in the automatic suspension of any license to which this section applies.

(d) A license that is suspended for failure to comply with the provisions of this section can only be reinstated when proof of satisfaction of all debts is made, or when a notarized copy of an accord has been filed as set forth under this section.

(e) This section applies only with respect to an unsatisfied final judgment that is substantially related to the construction activities of a licensee licensed under this chapter, or to the qualifications, functions, or duties of the license.

(f) Except as otherwise provided, this section shall not apply to an applicant or licensee when the financial obligation covered by this section has been discharged in a bankruptcy proceeding.

(g) Except as otherwise provided, the bond shall remain in full force in the amount posted until the entire debt is satisfied. If, at the time of renewal, the licensee submits proof of partial satisfaction of the financial obligations covered by this section, the board may authorize the bond to be reduced to the amount of the unsatisfied portion of the outstanding judgment. When the licensee submits proof of satisfaction of all debts, the bond requirement may be removed.

(h) The board shall take the actions required by this section upon notification by any party having knowledge of the outstanding judgment upon a showing of proof of the judgment.

(i) For the purposes of this section, the term "judgment" also includes any final arbitration award where the time to file a petition for a trial de novo or a petition to vacate or correct the arbitration award has expired, and no petition is pending.

(j) The qualifying person and any member of the licensee or personnel of the licensee named as a judgment debtor in an unsatisfied final judgment shall be automatically prohibited from serving as an officer, director, associate, partner, owner, qualifying individual, or other personnel of record of another licensee. This prohibition shall cause the license of any other existing renewable licensed entity with any of the same personnel of record as the judgment debtor licensee to be suspended until the license of the judgment debtor is reinstated or until those same personnel of record disassociate themselves from the renewable licensed entity.

(k) For purposes of this section, a cash deposit may be submitted in lieu of the bond.

(l) Notwithstanding subdivision (f), the failure of a licensee to notify the registrar of any unsatisfied final judgment in accordance with this section is cause for disciplinary action.

DIVISION 7. GENERAL BUSINESS REGULATIONS
PART 2. PRESERVATION AND REGULATION OF COMPETITION
CHAPTER 2. COMBINATIONS IN RESTRAINT OF TRADE
ARTICLE 2. PROHIBITED RESTRAINTS ON COMPETITION

16720. A trust is a combination of capital, skill or acts by two or more persons for any of the following purposes:

(a) To create or carry out restrictions in trade or commerce.

(b) To limit or reduce the production, or increase the price of merchandise or of any commodity.

(c) To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

(d) To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State.

(e) To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they do all or any or any combination of the following:

(1) Bind themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure, or fixed value.

(2) Agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure.

(3) Establish or settle the price of any article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity.

(4) Agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected.

16721. Recognizing that the California Constitution prohibits a person from being disqualified from entering or pursuing a business, profession, vocation, or employment because of sex, race, creed, color, or national or ethnic origin, and guarantees the free exercise and enjoyment of religion without discrimination or preference; and recognizing that these and other basic, fundamental constitutional principles are directly affected and denigrated by certain on-going practices in the business and commercial world, it is necessary that provisions protecting and enhancing a person's right to enter or pursue business and to freely exercise and enjoy religion, consistent with law, be established.

(a) No person within the jurisdiction of this state shall be excluded from a business transaction on the basis of a policy expressed in any document or writing and imposed by a third party where such policy requires discrimination against that person on the basis of the person's sex, race, color, religion, ancestry or national origin or on the basis that the person conducts or has conducted business in a particular location.

(b) No person within the jurisdiction of this state shall require another person to be excluded, or be required to exclude another person, from a business transaction on the basis of a policy expressed in any document or writing which requires discrimination against such other person on the basis of that person's sex, race, color, religion, ancestry or national origin or on the basis that the person conducts or has conducted business in a particular location.

(c) Any violation of any provision of this section is a conspiracy against trade.

(d) Nothing in this section shall be construed to prohibit any person, on this basis of his or her individual ideology or preferences, from doing business or refusing to do business with any other person consistent with law.

16721.5. It is an unlawful trust and an unlawful restraint of trade for any person to do the following:

(a) Grant or accept any letter of credit, or other document which evidences the transfer of funds or credit, or enter into any contract for the exchange of goods or services, where the letter of credit, contract, or other document contains any provision which requires any person to discriminate against or to certify that he, she, or it has not dealt with any other person on the basis of sex, race, color, religion, ancestry, or national origin, or on the basis of a person's lawful business associations.

(b) To refuse to grant or accept any letter of credit, or other document which evidences the transfer of funds or credit, or to refuse to enter into any contract for the exchange of goods or services, on the ground that it does not contain such a discriminatory provision or certification.

The provisions of this section shall not apply to any letter of credit, contract, or other document which contains any provision pertaining to a labor dispute or an unfair labor practice if the other provisions of such letter of credit, contract, or other document do not otherwise violate the provisions of this section.

For the purposes of this section, the prohibition against discrimination on the basis of a person's business associations shall be deemed not to include the requiring of association with particular employment or a particular group as a prerequisite to obtaining group rates or discounts on insurance, recreational activities, or other similar benefits.

For purposes of this section, "person" shall include, but not be limited to, individuals, firms, partnerships, associations, corporations, and governmental agencies.

16721.6. It is the intent of the Legislature that Sections 16721 and 16721.5 be interpreted and applied so as not to conflict with federal law with respect to transactions in the interstate or foreign commerce of the United States to the extent, if any, not preempted by the Export Administration Act of 1969 as amended (50 U.S.C.App. Sec. 2401 and following) and any regulations promulgated thereunder.

16722. Any contract or agreement in violation of this chapter is absolutely void and is not enforceable at law or in equity.

16725. It is not unlawful to enter into agreements or form associations or combinations, the purpose and effect of which is to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade.

16726. Except as provided in this chapter, every trust is unlawful, against public policy and void.

16727. It shall be unlawful for any person to lease or make a sale or contract for the sale of goods, merchandise, machinery, supplies, commodities for use within the State, or to fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, merchandise, machinery, supplies, commodities, or services of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of trade or commerce in any section of the State.

16728. (a) Notwithstanding any other provision of law, motor carriers of property, as defined in Section 34601 of the Vehicle Code, may voluntarily elect to participate in uniform cargo liability rules, uniform bills of lading or receipts for property being transported, uniform cargo credit rules, joint line rates or routes, classifications, mileage guides, and pooling. Motor carriers of property that so elect shall comply with all requirements of Section 14501(c) of Title 49 of the United States Code and with federal regulations promulgated pursuant to that section. The Legislature intends by this section to provide to motor carriers of property the antitrust immunity authorized by state action pursuant to Section 14501(c) of Title 49 of the United States Code.

(b) The election authorized by this section shall be exercised in either of the following ways:

(1) Participation in an agreement pursuant to Section 13703 of Title 49 of the United States Code.

(2) Filing with the Department of Motor Vehicles a notice of adoption of any or all of the uniform cargo liability rules, uniform bills of lading or receipts for property being transported, uniform cargo credit rules, joint rates or routes, classifications, mileage guides, and pooling contained in an identified publication authorized by Section 13703 of Title 49 of the United States Code, along with a written certification issued by the organization establishing those uniform rules or provisions in accordance with Section 13703(g)(1)(B) of Title 49 of the United States Code, affirming participation of the motor carrier of property in the collective publication. The certification shall be made available for public inspection.

(c) The elections made by a motor carrier of property pursuant to this section may be canceled by the motor carrier.

Civil Code

TITLE 1.8. PERSONAL DATA CHAPTER 1. INFORMATION PRACTICES ACT OF 1997 ARTICLE 5. AGENCY REQUIREMENTS

1798.14. Each agency shall maintain in its records only personal information which is relevant and necessary to accomplish a purpose of the agency required or authorized by the California Constitution or statute or mandated by the federal government.

1798.15. Each agency shall collect personal information to the greatest extent practicable directly from the individual who is the subject of the information rather than from another source.

1798.16. (a) Whenever an agency collects personal information, the agency shall maintain the source or sources of the information, unless the source is the data subject or he or she has received a copy of the source document, including, but not limited to, the name of any source who is an individual acting in his or her own private or individual capacity. If the source is an agency, governmental entity or other organization, such as a corporation or association, this requirement can be met by maintaining the name of the agency, governmental entity, or organization, as long as the smallest reasonably identifiable unit of that agency, governmental entity, or organization is named.

(b) On or after July 1, 2001, unless otherwise authorized by the Department of Information Technology pursuant to Executive Order D-3-99, whenever an agency electronically collects personal information, as defined by Section 11015.5 of the Government Code, the agency shall retain the source or sources or any intermediate form of the information, if either are created or possessed by the agency, unless the source is the data subject that has requested that the information be discarded or the data subject has received a copy of the source document.

(c) The agency shall maintain the source or sources of the information in a readily accessible form so as to be able to provide it to the data subject when they inspect any record pursuant to Section 1798.34. This section shall not apply if the source or sources are exempt from disclosure under the provisions of this chapter.

1798.17. Each agency shall provide on or with any form used to collect personal information from individuals the notice specified in this section. When contact with the individual is of a regularly recurring nature, an initial notice followed by a periodic notice of not more than one-year intervals shall satisfy this requirement. This requirement is also satisfied by notification to individuals of the availability of the notice in annual tax-related pamphlets or booklets provided for them. The notice shall include all of the following:

(a) The name of the agency and the division within the agency that is requesting the information.

(b) The title, business address, and telephone number of the agency official who is responsible for the system of records and who shall, upon request, inform an individual regarding the location of his or her records and the categories of any persons who use the information in those records.

(c) The authority, whether granted by statute, regulation, or executive order which authorizes the maintenance of the information.

(d) With respect to each item of information, whether submission of such information is mandatory or voluntary.

(e) The consequences, if any, of not providing all or any part of the requested information.

(f) The principal purpose or purposes within the agency for which the information is to be used.

(g) Any known or foreseeable disclosures which may be made of the information pursuant to subdivision (e) or (f) of Section 1798.24.

(h) The individual's right of access to records containing personal information which are maintained by the agency.

This section does not apply to any enforcement document issued by an employee of a law enforcement agency in the performance of his or her duties wherein the violator is provided an exact copy of the document, or to accident reports whereby the parties of interest may obtain a copy of the report pursuant to Section 20012 of the Vehicle Code.

The notice required by this section does not apply to agency requirements for an individual to provide his or her name, identifying number, photograph, address, or similar identifying information, if this information is used only for the purpose of identification and communication with the individual by the agency, except that requirements for an individual's social security number shall conform with the provisions of the Federal Privacy Act of 1974 (Public Law 93-579).

1798.18. Each agency shall maintain all records, to the maximum extent possible, with accuracy, relevance, timeliness, and completeness.

Such standard need not be met except when such records are used to make any determination about the individual. When an agency transfers a record outside of state government, it shall correct, update, withhold, or delete any portion of the record that it knows or has reason to believe is inaccurate or untimely.

1798.19. Each agency when it provides by contract for the operation or maintenance of records containing personal information to accomplish an agency function, shall cause, consistent with its authority, the requirements of this chapter to be applied to those records. For purposes of Article 10 (commencing with Section 1798.55), any contractor and any employee of the contractor, if the contract is agreed to on or after July 1, 1978, shall be considered to be an employee of an agency. Local government functions mandated by the state are not deemed agency functions within the meaning of this section.

1798.20. Each agency shall establish rules of conduct for persons involved in the design, development, operation, disclosure, or maintenance of records containing personal information and instruct each such person with respect to such rules and the requirements of this chapter, including any other rules and procedures adopted pursuant to this chapter and the remedies and penalties for noncompliance.

1798.21. Each agency shall establish appropriate and reasonable administrative, technical, and physical safeguards to ensure compliance with the provisions of this chapter, to ensure the security and confidentiality of records, and to protect against anticipated threats or hazards to their security or integrity which could result in any injury.

1798.22. Each agency shall designate an agency employee to be responsible for ensuring that the agency complies with all of the provisions of this chapter.

1798.23. The Department of Justice shall review all personal information in its possession every five years commencing July 1, 1978, to determine whether it should continue to be exempt from access pursuant to Section 1798.40.

Education Code

TITLE 3. POSTSECONDARY EDUCATION DIVISION 7. COMMUNITY COLLEGES PART 43. THE CALIFORNIA COMMUNITY COLLEGES

70901. (a) The Board of Governors of the California Community Colleges shall provide leadership and direction in the continuing development of the California Community Colleges as an integral and effective element in the structure of public higher education in the state. The work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.

(b) Subject to, and in furtherance of, subdivision (a), and in consultation with community college districts and other interested parties as specified in subdivision (e), the board of governors shall provide general supervision over community college districts, and shall, in furtherance thereof, perform the following functions:

(1) Establish minimum standards as required by law, including, but not limited to, the following:

(A) Minimum standards to govern student academic standards relating to graduation requirements and probation, dismissal, and readmission policies.

(B) Minimum standards for the employment of academic and administrative staff in community colleges.

(C) Minimum standards for the formation of community colleges and districts.

(D) Minimum standards for credit and noncredit classes.

(E) Minimum standards governing procedures established by governing boards of community college districts to ensure faculty, staff, and students the right to participate effectively in district and college governance, and the opportunity to express their opinions at the campus level and to ensure that these opinions are given every reasonable consideration, and the right of academic senates to assume primary responsibility for making recommendations in the areas of curriculum and academic standards.

(2) Evaluate and issue annual reports on the fiscal and educational effectiveness of community college districts according to outcome measures cooperatively developed with those districts, and provide assistance when districts encounter severe management difficulties.

(3) Conduct necessary systemwide research on community colleges and provide appropriate information services, including, but not limited to, definitions for the purpose of uniform reporting, collection, compilation, and analysis of data for effective planning and coordination, and dissemination of information.

(4) Provide representation, advocacy, and accountability for the California Community Colleges before state and national legislative and executive agencies.

(5) Administer state support programs, both operational and capital outlay, and those federally supported programs for which the board of governors has responsibility pursuant to state or federal law. In so doing, the board of governors shall do the following:

(A) Annually prepare and adopt a proposed budget for the California Community Colleges. The proposed budget shall, at a minimum, identify the total revenue needs for serving educational needs within the mission, the amount to be expended for the state general apportionment, the amounts requested for various categorical programs established by law, the amounts requested for new programs and budget improvements, and the amount requested for systemwide administration.

The proposed budget for the California Community Colleges shall be submitted to the Department of Finance in accordance with established timelines for development of the annual Budget Bill.

(B) To the extent authorized by law, establish the method for determining and allocating the state general apportionment.

(C) Establish space and utilization standards for facility planning in order to determine eligibility for state funds for construction purposes.

(6) Establish minimum conditions entitling districts to receive state aid for support of community colleges. In so doing, the board of governors shall establish and carry out a periodic review of each community college district to determine whether it has met the minimum conditions prescribed by the board of governors.

(7) Coordinate and encourage interdistrict, regional, and statewide development of community college programs, facilities, and services.

(8) Facilitate articulation with other segments of higher education with secondary education.

(9) Review and approve comprehensive plans for each community college district. The plans shall be submitted to the board of governors by the governing board of each community college district.

(10) Review and approve all educational programs offered by community college districts, and all courses that are not offered as part of an educational program approved by the board of governors.

(11) Exercise general supervision over the formation of new community college districts and the reorganization of existing community college districts, including the approval or disapproval of plans therefor.

(12) Notwithstanding any other provision of law, be solely responsible for establishing, maintaining, revising, and updating, as necessary, the uniform budgeting and accounting structures and procedures for the California Community Colleges.

(13) Establish policies regarding interdistrict attendance of students.

(14) Advise and assist governing boards of community college districts on the implementation and interpretation of state and federal laws affecting community colleges.

(15) Contract for the procurement of goods and services, as necessary.

(16) Carry out other functions as expressly provided by law.

(c) Subject to, and in furtherance of, subdivision (a), the board of governors shall have full authority to adopt rules and regulations necessary and proper to execute the functions specified in this section as well as other functions that the board of governors is expressly authorized by statute to regulate.

(d) Wherever in this section or any other statute a power is vested in the board of governors, the board of governors, by a majority vote, may adopt a rule delegating that power to the chancellor, or any officer, employee, or committee of the California Community Colleges, or community college district, as the board of governors may designate. However, the board of governors shall not delegate any power that is expressly made nondelegable by statute. Any rule delegating authority shall prescribe the limits of delegation.

(e) In performing the functions specified in this section, the board of governors shall establish and carry out a process for consultation with institutional representatives of community college districts so as to ensure their participation in the development and review of policy proposals. The consultation process shall also afford community college organizations, as well as interested individuals and parties, an opportunity to review and comment on proposed policy before it is adopted by the board of governors.

DIVISION 8. CALIFORNIA STATE UNIVERSITY
PART 55. CALIFORNIA STATE UNIVERSITY
CHAPTER 1. GENERAL PROVISIONS
ARTICLE 2. POWERS OF THE TRUSTEES

89036. (a) (1) The trustees may enter into agreements with any public or private agency, officer, person, or institution, corporation, association, or foundation for the performance of acts or for the furnishing of services, facilities, materials, goods, supplies, or equipment by or for the trustees or for the joint performance of an act or function or the joint furnishing of services and facilities by the trustees and the other party to the agreement.

(2) Notwithstanding any other provision of law, the trustees shall prescribe policies and procedures for the acquisition of services, facilities, materials, goods, supplies, or equipment.

The policies and procedures of the trustees for the acquisition of materials, goods, supplies, or equipment shall include competitive means for obtaining best value while complying with legislative intent regarding competitive bids or proposals as it is expressed in Article 3 (commencing with Section 10300) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code, and may include the use of financing arrangements.

(3) The trustees may enter into agreements with the federal government or any agency thereof in accordance with the procedures prescribed by the federal government or agency in order to receive the benefits of any federal statute extending benefits to the California State University or to California State University students, including, but not necessarily limited to, both of the following:

(A) Agreements with any agency of the federal government for the education of persons in the service of the federal government.

(B) Agreements with any agency of the federal government for the education of veterans. These agreements shall provide for payment of the maximum amount permitted under the act, or acts, of Congress under which the agreement is entered into.

(4) Notwithstanding any other provision of law, the trustees have all power necessary to perform any acts, and comply with conditions, required or imposed by the federal government in order to receive the benefits. The trustees are vested with all necessary power and authority to cooperate with any agency of the federal government in the administration of any applicable act of Congress and rules and regulations adopted thereunder.

(b) Notwithstanding any other provision of law, the trustees have all power necessary to award contracts to one or more contractors, at any one or more campuses, for the collection of delinquent education loans required to be repaid under federal law.

Food and Agriculture Code

DIVISION 9. ANIMALS GENERALLY PART 3. SLAUGHTERED ANIMALS CHAPTER 6. SLAUGHTER

19501. (a) Cattle, calves, horses, mules, sheep, swine, goats, or fallow deer, or poultry shall be slaughtered by the methods prescribed in this section. No state agency shall contract for, purchase, procure, or sell all or any portion of any animal, unless that animal is slaughtered in conformity with this chapter. This chapter applies to any person engaged in the business of slaughtering animals enumerated in this section, or any person slaughtering any of those animals when all, or any part of, that animal is subsequently sold or used for commercial purposes.

(b) All cattle, calves, horses, mules, sheep, swine, goats, or fallow deer subject to this part, or poultry subject to Part 1 (commencing with Section 24501) of, Part 2 (commencing with Section 25401) of, and Part 3 (commencing with Section 26401) of, Division 12 shall be slaughtered by either of the following prescribed methods:

(1) The animal shall be rendered insensible to pain by a captive bolt, gunshot, electrical or chemical means, or any other means that is rapid and effective before being cut, shackled, hoisted, thrown, or cast, with the exception of poultry which may be shackled.

(2) The animal shall be handled, prepared for slaughter, and slaughtered in accordance with ritual requirements of the Jewish or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument.

This section does not apply to the slaughter of spent hens and small game birds, as defined by the department by regulation.

Health and Safety Code

DIVISION 104. ENVIRONMENTAL HEALTH
PART 3. PRODUCT SAFETY
CHAPTER 5. CONSUMER PRODUCTS
ARTICLE 4. BUCKET LABELING

108625. A manufacturer, distributor, or seller of plastic or metal four-gallon to six-gallon, inclusive, straight sided, slightly tapered, open head, industrial containers, as defined by the American Society for Testing and Materials (ASTM), intended for use, sale, distribution, or any other purpose within the state, irrespective of point of origin, shall ensure that each industrial container bears a warning label or labels, that shall be applied prior to release for shipment into the stream of commerce, and shall meet all of the following requirements:

(a) The label or labels shall be a permanent paper, plastic, silk screened, or an offset printed label and shall be easily removable only by the use of tools or a solvent.

(b) The label or labels shall be either of the following:

(1) One label of at least six inches in height, by at least two inches in width, and containing a minimum total area of at least 17 square inches. The label shall be placed on the side of the container near where the handle is inserted. The top half of the label shall be in English and the bottom half of the label shall be in Spanish; or

(2) Two labels of at least five inches in height, by two and three-quarters inches in width or any larger size as the labeler may voluntarily choose, and one label shall be placed on each side of the container near where the handle is inserted. The label on one side shall be in Spanish, and the label on the other side shall be in English.

(c) The label shall contain on a contrasting background both the word "WARNING" in block print and the words "Children Can Fall Into Bucket and Drown—Keep Children Away From Buckets With Even a Small Amount of Water."

(d) The label shall contain a picture of a child reaching into an industrial container and shall include an encircled slash and a triangle with an exclamation point upon a contrasting field before the word "WARNING".

108630. Any person subject to the labeling requirements of this article is exempt from those requirements if the person has a label that is in substantial compliance with the requirements of this article.

108635. Any person who violates this article is guilty of a misdemeanor and shall be subject to Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code.

108640. This article shall become operative on September 1, 1993, and shall remain in effect unless or until preempted by federal law. Notwithstanding this section, any industrial containers, as defined in Section 108625, manufactured prior to September 1, 1993, shall not be subject to this article.

Labor Code

DIVISION 1. DEPARTMENT OF INDUSTRIAL RELATIONS CHAPTER 6. OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

144.7. (a) The board shall, no later than January 15, 1999, adopt an emergency regulation revising the bloodborne pathogen standard currently set forth in Section 5193 of Title 8 of the California Code of Regulations in accordance with subdivision (b). Following adoption of the emergency regulation, the board shall complete the regulation adoption process and shall formally adopt a regulation embodying a bloodborne pathogen standard meeting the requirements of subdivision (b), which regulation shall become operative no later than August 1, 1999. Notwithstanding Section 11346.1 of the Government Code, the emergency regulation adopted pursuant to this subdivision shall remain in effect until the nonemergency regulation becomes operative or until August 1, 1999, whichever first occurs.

(b) The board shall adopt a standard, as described in subdivision (a), to be developed by the Division of Occupational Safety and Health. The standard shall include, but not be limited to, the following:

(1) A revised definition of "engineering controls" that includes sharps injury prevention technology including, but not limited to, needleless systems and needles with engineered sharps injury protection, which shall be defined in the standard.

(2) A requirement that sharps injury prevention technology specified in paragraph (1) be included as engineering or work practice controls, except in cases where the employer or other appropriate party can demonstrate circumstances in which the technology does not promote employee or patient safety or interferes with a medical procedure. Those circumstances shall be specified in the standard, and shall include, but not be limited to, circumstances where the technology is medically contraindicated or not more effective than alternative measures used by the employer to prevent exposure incidents.

(3) A requirement that written exposure control plans include an effective procedure for identifying and selecting existing sharps injury prevention technology of the type specified in paragraph (1).

(4) A requirement that written exposure control plans be updated when necessary to reflect progress in implementing the sharps injury prevention technology specified in paragraph (1).

(5) A requirement that information concerning exposure incidents be recorded in a sharps injury log, including, but not limited to, the type and brand of device involved in the incident.

(c) The Division of Occupational Safety and Health may consider and propose for adoption by the board additional revisions to the bloodborne pathogen standards to prevent sharps injuries or exposure incidents including, but not limited to, training requirements and measures to increase vaccinations.

(d) The Division of Occupational Safety and Health and the State Department of Health Services shall jointly compile and maintain a list of existing needleless systems and needles with engineered sharps injury protection, which shall be available to assist employers in complying with the requirements of the bloodborne pathogen standard adopted pursuant to this section. The list may be developed from existing sources of information, including, but not limited to, the federal Food and Drug Administration, the federal Centers for Disease Control, the National Institute of Occupational Safety and Health, and the United States Department of Veterans Affairs.

DIVISION 2. EMPLOYMENT REGULATION AND SUPERVISION
PART 7. PUBLIC WORKS AND PUBLIC AGENCIES
CHAPTER 1. PUBLIC WORKS
ARTICLE 2. WAGES

1777.1. (a) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in violation of this chapter with intent to defraud, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period of not less than one year or more than three years to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(b) Whenever a contractor or subcontractor performing a public works project pursuant to this chapter is found by the Labor Commissioner to be in willful violation of this chapter, except Section 1777.5, the contractor or subcontractor or a firm, corporation, partnership, or association in which the contractor or subcontractor has any interest is ineligible for a period up to three years for each second and subsequent violation occurring within three years of a separate and previous willful violation of this chapter to do either of the following:

(1) Bid on or be awarded a contract for a public works project.

(2) Perform work as a subcontractor on a public works project.

(c) A willful violation occurs when the contractor or subcontractor knew or reasonably should have known of his or her obligations under the public works law and deliberately fails or refuses to comply with its provisions.

(d) Not less than semiannually, the Labor Commissioner shall publish and distribute to awarding bodies a list of contractors who are ineligible to bid on or be awarded a public works contract, or to perform work as a subcontractor on a public works project pursuant to this chapter. The list shall contain the name of the contractor, the Contractor's State License Board license number of the contractor, and the effective period of debarment of the contractor.

The commissioner shall also place advertisements in construction industry publications targeted to the contractors and subcontractors, chosen by the commissioner, that state the effective period of the debarment and the reason for debarment. The advertisements shall appear one time for each debarment of a contractor in each publication chosen by the commissioner. The debarred contractor or subcontractor shall be liable to the commissioner for the reasonable cost of the advertisements, not to exceed five thousand dollars (\$5,000). The amount paid to the commissioner for the advertisements shall be credited against the contractor's or subcontractor's obligation to pay civil fines or penalties for the same willful violation of this chapter.

(e) For purposes of this section, "contractor or subcontractor" means a firm, corporation, partnership, or association and its responsible managing officer, as well as any supervisors, managers, and officers found by the Labor Commissioner to be personally and substantially responsible for the willful violation of this chapter.

(f) For the purposes of this section, the term "any interest" means an interest in the entity bidding or performing work on the public works project, whether as an owner, partner, officer, manager, employee, agent, consultant, or representative. "Any interest" includes, but is not limited to, all instances where the debarred contractor or subcontractor receives payments, whether cash or any other form of compensation, from any entity bidding or performing work on the public works project, or enters into any contracts or agreements with the entity bidding or performing work on the public works project for services performed or to be performed for contracts that have been or will be assigned or sublet, or for vehicles, tools, equipment, or supplies that have been or will be sold, rented, or leased during the period from the initiation of the debarment proceedings until the end of the term of the debarment period. "Any interest" does not include shares held in a publicly traded corporation if the shares were not received as compensation after the initiation of debarment from an entity bidding or performing work on a public works project.

(g) For the purposes of this section, the term "entity" is defined as a company, limited liability company, association, partnership, sole proprietorship, limited liability partnership, corporation, business trust, or organization.

(h) The Labor Commissioner shall adopt rules and regulations for the administration and enforcement of this section.

Military and Veterans Code

DIVISION 4. VETERANS' AID AND WELFARE
CHAPTER 6. STATE BENEFITS FOR VETERANS
ARTICLE 6. DISABLED VETERAN PARTICIPATION GOALS FOR PROFESSIONAL BOND
SERVICES AND STATE CONTRACTS

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

(a) "Administering agency" means the Treasurer in the case of contracts for professional bond services, and the Department of General Services' Office of Small Business and Disabled Veteran Business Enterprise Services, in the case of contracts governed by Section 999.2.

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

(c) "Bonds" means bonds, notes, warrants, certificates of participation, and other evidences of indebtedness issued by or on behalf of the State of California.

(d) "Contract" includes any agreement or joint agreement to provide professional bond services to the State of California or an awarding department. "Contract" also 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.

(e) (1) "Contractor" means any person or persons, regardless of race, color, creed, national origin, ancestry, sex, marital status, disability, religious or political affiliation, or age, or any sole proprietorship, firm, partnership, joint venture, corporation, or combination thereof 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. "Contractor" includes any provider of professional bond services who enters into a contract with an awarding department.

(2) "Disabled Veteran Business Enterprise contractor, subcontractor, or supplier" means any person or entity that has been certified by the administering agency pursuant to this article and that performs a "commercially useful function," as defined below, in providing services or goods that contribute to the fulfillment of the contract requirements:

(A) A person or an entity is deemed to perform a "commercially useful function" if a person or entity does all of the following:

(i) (I) Is responsible for the execution of a distinct element of the work of the contract.

(II) Carries out the obligation by actually performing, managing, or supervising the work involved.

(III) Performs work that is normal for its business services and functions.

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

(B) A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation.

(f) "Disabled veteran" means 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"), who has at least a 10 percent service-connected disability and who is domiciled in the State of California.

(g) (1) "Disabled veteran business enterprise" means a business certified by the administering agency as meeting all of the following requirements:

(A) It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more

disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.

(B) 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.

(C) It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.

(2) Notwithstanding paragraph (1), after the death or the certification of a permanent medical disability of a disabled veteran who is a majority owner of a business that qualified as a disabled veteran business enterprise prior to that death or certification of a permanent medical disability, and solely for purposes of any contract entered into before that death or certification, that business shall be deemed to be a disabled veteran business enterprise for a period not to exceed three years after the date of that death or certification of a permanent medical disability, if the business is inherited or controlled by the spouse or child of that majority owner, or by both of those persons.

(h) "Foreign corporation," "foreign firm," and "foreign-based business" means a business entity that is incorporated or has its principal headquarters located outside the United States of America.

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

(j) "Management and control" means effective and demonstrable management of the business entity.

(k) "Professional bond services" include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter's counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.

999.1. (a) (1) Notwithstanding any other provision of law, each awarding department shall have annual statewide participation goals of not less than 3 percent for disabled veteran business enterprises for contracts entered into by the awarding department during the year for professional bond services. This section shall not apply if a contract for professional bond services of an underwriter is to be obtained by competitive bid. However, each awarding department shall establish goals for contracts to be obtained by competitive bid for professional bond services.

(2) These goals shall apply to the overall dollar amount expended by the awarding department with respect to the contracts for professional bond services relating to the issuance of bonds by the awarding department, including amounts spent as underwriter's discounts.

(b) In attempting to meet the goals set forth in subdivision (a), the awarding department shall consider establishing cocounsel, joint venture, and subcontracting relationships, including disabled veteran business enterprises, in all contracts for professional bond services. It shall be the responsibility of the head of each awarding department to be supportive of the Treasurer's program for assigning representative portions of professional bond services contracts for purposes of meeting the goals established pursuant to this section. However, nothing in this article shall preclude the awarding department from achieving the goals set forth in this section without requiring joint ventures, cocounsel, or subcontracting arrangements.

(c) This section shall not limit the ability of any awarding department to meet a goal higher than those set forth in subdivision (a) for the participation of disabled veteran business enterprises in contracts awarded by the awarding department.

999.2. (a) Notwithstanding any other provision of law, contracts awarded by any state agency, department, officer, or other state governmental entity, including school districts when they are expending state funds 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 3 percent for disabled veteran business enterprises. These goals apply to the overall dollar amount expended each year by the awarding department.

(b) For purposes of this section:

(1) "Broker" or "agent" means any individual or entity, or any combination thereof, that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more certified disabled veterans has 51 percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.

(2) "Equipment" means any piece of equipment that is used or provided for rental to any state agency, department, officer, or other state governmental entity, including equipment for which operators are provided.

(3) "Equipment broker" means any broker or agent who rents equipment to an awarding department.

(c) A disabled veteran business enterprise that rents equipment to an awarding department shall be deemed to be an equipment broker unless one or more disabled veterans has 51-percent ownership of the quantity and the value of each piece of equipment. If the equipment is owned by one or more disabled veterans, each disabled veteran owner shall, prior to performance under any contract, submit to the awarding department a declaration signed by the disabled veteran owner stating that the owner is a disabled veteran and providing the name, address, telephone number, and tax identification number of the disabled veteran owner. Each disabled veteran owner shall submit his or her federal income tax returns to the administering agency pursuant to subdivision (g) as if he or she were a disabled veteran business enterprise. The disabled veteran business enterprise of a disabled veteran owner who fails to submit his or her tax returns will be deemed to be an equipment broker.

(d) A disabled veteran business enterprise that rents equipment to an awarding department shall, prior to performing the contract, submit to the awarding department a declaration signed by each disabled veteran owner and manager of the enterprise stating that the enterprise obtained the contract by representing that the enterprise was a disabled veteran business enterprise meeting and maintaining all of the requirements of a disabled veteran business enterprise. The declaration shall include the name, address, telephone number, and tax identification number of the owner of each piece of equipment identified in the contract.

(e) State funds expended for equipment rented from equipment brokers pursuant to contracts awarded under this section shall not be credited toward the 3-percent goal.

(f) A disabled veteran business enterprise that is a broker or agent and that obtains a contract pursuant to subdivision (a) shall, prior to performing the contract, disclose to the awarding department that the business is a broker or agent. The disclosure shall be made in a declaration signed and executed by each disabled veteran owner and manager of the enterprise, declaring that the enterprise is a broker or agent, and identifying the name, address, and telephone number of the principal for whom the enterprise is acting as a broker or agent.

(g) (1) A disabled veteran business enterprise, and each owner thereof, shall, at the time of certification, submit to the administering agency complete copies of the enterprise's federal income tax returns for the three previous tax years.

(2) A disabled veteran business enterprise, and each owner thereof, shall submit to the administering agency complete copies of the enterprise's federal income tax returns that have a postcertification due date, on or before the due date, including extensions.

(3) A disabled veteran business enterprise that, and each owner thereof who, has not submitted to the administering agency complete copies of the enterprise's federal income tax returns for the three tax years preceding certification nor for each postcertification tax year for which a return was required to be filed, shall have 90 days to submit those returns.

(4) A disabled veteran business enterprise that fails to comply with any provision of this subdivision shall be prohibited from participating in any state contract until the disabled veteran business enterprise complies with the provisions of this subdivision.

Funds expended involving a disabled veteran business enterprise during any period in which that enterprise is not in compliance with the provisions of this subdivision shall not be credited toward the awarding department's 3-percent goal.

(h) A disabled veteran business enterprise that fails to maintain the certification requirements set forth in this article shall immediately notify the awarding department and the administering agency of that failure by filing a notice of failure that states with particularity each requirement the disabled veteran business enterprise has failed to maintain.

999.3. Notwithstanding Section 999.1, if a contract for professional bond services of an underwriter is to be obtained by competitive bid, the awarding department shall, at a minimum, take all of the following actions:

(a) Deliver the notice of sale or other notification of intention to issue the bonds to all disabled veteran business enterprises that have listed their names with the awarding department for the purpose of this notice and other qualified disabled veteran enterprises known to the awarding department.

(b) State in all notices of sale and other notifications of intention to issue bonds that disabled veteran business enterprises are encouraged to respond.

(c) Require all submitting bidders to certify their awareness of the goals of the awarding department in accordance with this article.

999.5. (a) The administering agency shall establish a method of monitoring adherence to the goal specified in Section 999.1, including requiring a followup report from all contractors upon the completion of any sale of bonds.

(b) The awarding department shall establish a method of monitoring adherence to the goals specified in Section 999.2.

(c) An awarding department shall not credit toward the department's 3 percent goal state funds expended on a contract with a disabled veteran business enterprise that does not meet and maintain the certification requirements.

(d) The administering agency shall adopt rules and regulations, including standards for good faith efforts, for the purpose of implementing this section. Emergency regulations consistent with this section may be adopted.

999.6. In implementing this article, the awarding department shall utilize existing resources such as the Office of Small Business and Disabled Veteran Business Enterprise Services, the Department of Veterans Affairs, the federal Department of Veterans Affairs, and the Small Business Administration.

999.7. (a) (1) On January 1 of each year, each awarding department shall report to the Governor, the Legislature, the Department of General Services, and the Department of Veterans Affairs on the level of participation by disabled veteran business enterprises in contracts identified in this article for the previous fiscal year.

(2) If the awarding department has not met the established goals for that year, the awarding department shall report to the Legislature, the Department of General Services, and the Department of Veterans Affairs the reasons for the awarding department's inability to achieve the goals and shall identify steps it shall take in an effort to achieve the goals.

(b) On April 1 of each year, the Department of General Services shall prepare for the Governor, the Legislature, and the Department of Veterans Affairs a statewide statistical summary detailing each awarding department's goal achievement and a statewide total of those goals.

999.8. (a) Notwithstanding anything in this article to the contrary, the validity or enforceability of any bonds, or any contract or any notes, or other obligations issued by the awarding department to provide for the payment of any contract subject to this article shall not be affected in any way by the failure of an awarding department to meet the goals established under this article.

(b) No action may be maintained to enjoin the issuance of any bonds to which this article applies or the enforcement of any contract for professional bond services based on an awarding department's failure to meet the goals set forth in Section 999.1.

999.9. (a) It shall be unlawful for a person 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, certification as a disabled veteran business enterprise for the purpose 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 certification or denial of certification of any entity as a 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 that has requested certification as a disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys, contracts, or funds expended under a contract, that are awarded by any state agency, department, officer, or other state governmental agency, to which the person is not entitled under this article.

(5) Knowingly and with intent to defraud, fraudulently represent participation of a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract.

(6) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.

(7) Willfully and knowingly aid or assist in, or procure, counsel, or advise, the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.

(8) Willfully and knowingly fail to file any declaration or notice with the awarding agency that is required by Section 999.2.

(9) Establish, or knowingly aid in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to (8), inclusive.

(b) Any person who violates any of the provisions of subdivision (a) shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding one thousand dollars (\$1,000), or by both. In addition, the person shall be liable for a civil penalty of not less than ten thousand dollars (\$10,000) nor more than thirty thousand dollars (\$30,000) for the first violation, and a civil penalty of not less than thirty thousand dollars (\$30,000) nor more than fifty thousand dollars (\$50,000) for each additional or subsequent violation. A defendant who violates any of the provisions of subdivision (a) shall pay all costs and attorney's fees incurred by the plaintiff in a civil action brought pursuant to this section.

(c) (1) The Department of General Services shall suspend any person who violates subdivision (a) 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 three years, and if certified as a disabled veteran business enterprise, the department shall revoke the business' certification for a period of not less than three years. An additional or subsequent violation shall extend the periods of suspension and revocation for a period of not less than five years. The suspension and revocation shall apply to the principals of the business and any subsequent business formed or financed by, or affiliated with, those principals.

(2) The Department of General Services shall prohibit any business or person who fails to satisfy the penalties, costs, and attorney's fees imposed pursuant to subdivision (b) 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 Department of General Services. The Department of General Services 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 Department of General Services 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 suspended for violating this section during the period of the person's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person as a subcontractor suspended for violating this section during the period of the person's suspension.

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

999.10. (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 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 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 of Division 2 of the Public Contract Code) shall apply to the information required by subdivision (a) relating to subcontractors certified as 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 of the Public Contract Code.

(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.

999.11. The Department of Veterans Affairs shall appoint an advocate to do all of the following:

(a) Oversee, promote, and coordinate efforts to facilitate implementation of this article.

(b) Disseminate information on this article.

(c) Coordinate reports pursuant to Section 999.7.

(d) Coordinate with administering agencies and existing and potential disabled veteran business enterprises to achieve the goals specified in Sections 999.1 and 999.2.

(e) Coordinate with the disabled veteran business enterprise advocates appointed in all awarding departments pursuant to Section 999.12.

999.12. Each awarding department shall appoint an agency disabled veteran business enterprise advocate. This person shall be the same individual appointed pursuant to Section 14846 of the Government Code. The disabled veteran business enterprise advocate shall do all of the following:

(a) Assist certified disabled veteran business enterprises in participating in that agency's contracting process.

(b) Assist contract officers in seeking disabled veteran business enterprises to participate in the agency's contract and procurement activities.

(c) Disseminate information to the agency's contract and procurement staff.

(d) Serve as an advocate for the disabled veteran business enterprises that are utilized as the agency's contractors or subcontractors.

(e) Report to the Office of Small Business Certification and Resources regarding any violation of this article.

(f) Coordinate with the state disabled veteran business enterprise advocate at the Department of Veterans Affairs in an effort to meet the statewide 3-percent goal provided for in Section 999.2.

999.13. This article includes language similar to that contained in Article 1.5 (commencing with Section 10115) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code and does not create an independent or additional goal or program.

Public Resources Code

DIVISION 30. WASTE MANAGEMENT
PART 3. STATE PROGRAMS
CHAPTER 4. RECYCLED-CONTENT HIGH GRADE, BLEACHED PRINTING AND WRITING
PAPER PROGRAM
ARTICLE 1. DEFINITIONS

42200. The following definitions govern the construction of this chapter.

42201. "Department" means Department of General Services.

42202. (a) "Recycled-content high grade, bleached printing and writing papers" means all paper and woodpulp products containing postconsumer material and secondary material. "Postconsumer material" means a finished material which would normally be disposed of as a solid waste, having completed its life cycle as a consumer item. "Secondary material" means fragments of finished products or finished products of a manufacturing process, which has converted a virgin resource into a commodity of real economic value, and includes postconsumer material, but does not include fibrous waste generated during the manufacturing process such as fibers recovered from wastewater or trimmings of paper machine rolls (mill broke), wood slabs, chips, sawdust, or other wood residue from a manufacturing process.

(b) "Recycled paper product" means a paper product with not less than 50 percent by fiber weight consisting of secondary material or postconsumer material and with not less than 10 percent of the fiber weight consisting of postconsumer material.

(c) For high speed copier paper, offset paper, forms bond, computer printout paper, carbonless paper, file folders, white wove envelopes, and for other uncoated printing and writing papers, such as writing and office paper, book paper, cotton fiber paper containing 25 to 75 percent cotton fiber, and cover stock, the minimum content standard shall be no less than 20 percent of fiber weight of postconsumer materials beginning December 31, 1994. The minimum content standard shall be increased to 30 percent of fiber weight of postconsumer materials beginning on December 31, 1998.

ARTICLE 2. PURCHASES

42210. On and after January 1, 1991, the department shall ensure that at least 25 percent of all high grade, bleached printing and writing papers purchased for state agencies is made from recycled-content high grade, bleached printing and writing papers, as defined, allowing for the following conditions:

(a) The suppliers of recycled-content high grade, bleached printing and writing papers bid within 5 percent of the lowest bids by suppliers of high grade, bleached printing and writing papers made from virgin material.

(b) The recycled-content high grade, bleached printing and writing papers meet the specifications for state purchases of high grade, bleached printing and writing papers established by the department pursuant to Section 42212.

(c) The suppliers of recycled-content high grade, bleached printing and writing papers make shipment to the department within a reasonable time period, as determined by the department.

42211. The percentage of recycled-content high grade, bleached printing and writing papers purchased for state agencies shall be calculated in reams and used on an annual basis and shall increase to:

- (a) Thirty percent on and after January 1, 1994.
- (b) Thirty-five percent on and after January 1, 1997.
- (c) Forty percent on and after January 1, 2000.

42212. The department shall revise its specifications for high grade, bleached printing and writing papers by January 1, 1991. The revised specifications shall be based on the mean average of the numerical standards for printing opacity, brightness level, and cross-machine tear strength for all recycled-content high grade, bleached printing and writing papers available in the state. The department shall establish specifications which deviate from this average by not more than 5 percent.

42213. The department shall submit to the board the numerical standards and calculations used in determining its specifications for high grade, bleached printing and writing papers within 30 days of establishing the specifications.

42214. The department shall review its specifications at least once every two years to determine whether they discriminate against recycled-content high grade, bleached printing and writing papers available in the state. If it is determined that discrimination exists, the department shall establish new specifications according to the criteria in Section 42212.

42215. The department shall inform every supplier of recycled-content high grade, bleached printing and writing papers that had submitted bids to sell such papers to the state within the 12 months preceding a bidding period for high grade, bleached printing and writing papers that the state is accepting bids for high grade, bleached printing and writing papers. The name of each supplier contacted, address, and telephone number shall be submitted to the board within 30 days following the close of each bidding period. The department shall make that information available to any other supplier upon request.

ARTICLE 3. CERTIFICATION

42220. The department shall, on or before March 1 of each year, certify the number of reams of high grade, bleached printing and writing papers made from virgin material purchased for use by state agencies during the preceding calendar year and the number of reams of recycled-content high grade, bleached printing and writing papers used during the preceding calendar year.

42221. The certification of the department shall be submitted to the board on or before March 31 of each year following the reporting year.

42222. If the department is unable to meet the 25 percent purchasing requirement for recycled-content high grade, bleached printing and writing papers within any reporting period, the department shall so certify and provide specific reasons for failing to meet the 25 percent purchasing requirement. This certification shall be submitted to the board by April 30 of each year following the reporting year.

CHAPTER 5. COMPOST MARKET PROGRAM
ARTICLE 1. DEFINITIONS

42230. The following definitions govern the construction of this chapter.

42231. "Compost" means the product resulting from the controlled biological decomposition of organic wastes that are sources separated from the municipal solid waste stream.

ARTICLE 2. COMPOST MARKET PROGRAM

42240. The Department of General Services and the board, in consultation with other affected state agencies, shall, on or before January 1, 1991, adopt specifications for the purchase of compost by the State of California. The specifications shall designate the state minimum operating standards and product quality standards. The specifications shall be designed to maximize the use of compost without jeopardizing the safety and health of the citizens of the state or the environment.

42241. On or after January 1, 1991, the Department of Transportation shall use compost in place of, or to supplement, petroleum-based commercial fertilizers in the state's highway landscape maintenance program.

42241.5. The board may develop a program to increase the use of compost products in agricultural applications. The program may include, but shall not be limited to, the following:

- (a) Identification of federal, state, and local financial assistance.
- (b) Cooperative efforts with appropriate federal and state agencies.

42243. On or after January 1, 1993, the Department of Forestry and Fire Protection, the Department of Parks and Recreation, and the Department of General Services shall initiate programs to restore public lands that use compost, co-compost, rice straw, and chemically fixed sewage sludge and shall use those products or materials wherever possible.

42244. The board shall evaluate compost, cocompost, and chemically fixed sewage sludge for use as solid waste landfill cover materials or for use as extenders for currently used cover material. Compost, cocompost, and chemically fixed sewage sludge products, when used as a substitute for or mixed with currently approved cover material, shall possess all the physical characteristics required in the definition of a cover material.

42244.5. On or before January 1, 1994, the board shall evaluate rice straw for use as a solid waste landfill cover material or for use as an extender for currently used cover material. Rice straw or rice straw materials, when used as a substitute for or mixed with currently approved cover material, shall possess all the physical characteristics required in the definition of a cover material. The results of the evaluation shall be included in the report required pursuant to Section 40507.

42245. On or after January 1, 1992, based on the results of the evaluation conducted in accordance with Section 42244, the board may, on a case-by-case basis, approve the use of compost, co-compost, and chemically fixed sewage sludge, that meet the performance standards for cover material, for up to 25 percent of landfill cover materials or landfill cover extenders.

42246. Any procuring agency that prepares a request for bid for commercial fertilizers or soil amendment products shall document its determination that the use of a compost, co-compost, or chemically fixed sewage sludge would jeopardize public health or safety or would jeopardize the intended result of the project.

CHAPTER 5.4. PLASTIC TRASH BAGS

42290. For purposes of this chapter, the following terms have the following meaning:

- (a) "Manufacturer" means a person who manufactures plastic trash bags for sale in this state.
- (b) (1) "Plastic trash bag" means a bag that is manufactured for intended use as a container to hold, store, or transport materials to be discarded, composted, or recycled, including, but not limited to, garbage bags, composting bags, lawn and leaf bags, can-liner bags, kitchen bags, compactor bags, and recycling bags.
 - (2) A plastic trash bag does not include a grocery sack or any other bag that is manufactured for intended use as a container to hold, store, or transport food.
 - (3) A plastic trash bag does not include any plastic bag that is used for the purpose of containing either of the following wastes:
 - (A) "Hazardous waste," as defined in Section 25117 of the Health and Safety Code.
 - (B) "Medical waste," as defined in Section 117690 of the Health and Safety Code.
 - (c) "Postconsumer material" means a finished product that would normally be disposed of as solid waste, having completed its intended end-use and product life cycle. "Postconsumer material" does not include manufacturing and fabrication scrap.
 - (d) "Regulated bag" means a plastic trash bag of 0.70 mil or greater thickness that is intended for sale in the state.
 - (e) "Wholesaler" means any person who purchases plastic trash bags from a manufacturer for resale in this state.

42290.5. To encourage waste diversion of polyethylene from California landfills as well as to encourage California's postconsumer market development, it is the intent of the Legislature that any certification of postconsumer materials used for compliance with this chapter not be the same materials that are certified or used for compliance with any other state requirement or with any federal requirement that requires the use or reporting of postconsumer materials for plastic products.

42291. (a) Until January 1, 1998, every manufacturer that manufactures plastic trash bags of 0.75 mil or greater thickness for sale in this state shall ensure that at least 30 percent of the material used in those plastic trash bags is recycled plastic postconsumer material.

(b) (1) On and after January 1, 1998, the manufacturer's required use of recycled plastic postconsumer material shall be determined pursuant to paragraph (2). Compliance by a manufacturer with either alternative shall be deemed to be compliance with this subdivision.

(2) Every manufacturer of regulated bags shall do one of the following:

(A) Ensure that its plastic trash bags intended for sale in this state contain a quantity of recycled plastic postconsumer material equal to at least 10 percent of the weight of the regulated bags.

(B) Ensure that at least 30 percent of the weight of the material used in all of its plastic products intended for sale in this state is recycled plastic postconsumer material.

(3) Beginning March 1, 1999, and annually thereafter, every manufacturer subject to this subdivision shall certify to the board that it has used the required amount of recycled plastic postconsumer material annually in compliance with paragraph (2).

(c) Any certification of postconsumer materials used for compliance with this chapter shall not include any materials that are certified or used for compliance with any other state or federal requirement that requires the use or reporting of postconsumer materials for any plastic products.

(d) If any manufacturer subject to this section is unable to obtain sufficient amounts of recycled plastic postconsumer material to comply with this section within a reporting period because of unavailability or because the available material did not meet recycled plastic postconsumer material quality standards adopted by the board, the manufacturer shall certify that fact to the board. Each manufacturer making that certification shall make a reasonable effort to identify available supplies of material before submitting certification to the board.

(e) The Legislature hereby finds and declares that although the changes made to this section by the act amending this section during the 1998 portion of the 1997-98 Regular Session become effective after January 1, 1998, it is the intent of the Legislature that the new requirements specified in subdivision (b) be effective as of January 1, 1998. The Legislature further finds that this change is requested by the manufacturers subject to this section and that the retroactive effect of these changes will not cause any hardship on any manufacturer subject to this section, or cause any manufacturer to be subject to regulatory action as a result of these changes, but rather, would instead have the effect of preventing hardship to the manufacturers regulated by this section.

42291.5. For each pound of recycled plastic postconsumer material purchased from a source of recycled plastic postconsumer material in this state for use in the manufacture of plastic trash bags, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, the board shall credit the manufacturer certifying pursuant to Section 42293 with having used 1.2 pounds of recycled plastic postconsumer material toward compliance with the requirements of Section 42291.

42292. Each manufacturer shall obtain from its suppliers of recycled plastic postconsumer material for use in the manufacture of plastic trash bags, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, a statement identifying the quantity, source location, and proximate prior usage of, and the actual postconsumer material content of, each shipment of recycled plastic postconsumer material purchased by the manufacturer, and any other information that the board, may, by regulation, require the manufacturer to obtain from its suppliers, for purposes of inclusion in the annual report required by Section 42293.

42293. (a) On or before March 1, 1999, and annually thereafter, each manufacturer subject to this chapter shall submit a report to the board certifying that it has complied with Section 42291 during the preceding calendar year, certifying the name and physical location of each of its suppliers of recycled plastic postconsumer material for use in the manufacture of plastic trash bags, or other products manufactured with recycled plastic postconsumer material in compliance with this chapter, and containing the information obtained pursuant to Section 42292 and any other information that the board may require by regulation. Any manufacturer that processes its own recycled plastic postconsumer material shall certify to the board that it is the supplier of the material.

(b) On or before October 1, 2001, the board shall survey manufacturers subject to this section and, notwithstanding Section 7550.5 of the Government Code, report back to the Legislature. The survey shall do all of the following:

(1) Identify the name and physical location of suppliers certified by manufacturers pursuant to subdivision (a).

(2) Identify the quantity of recycled plastic postconsumer material provided by suppliers within the state and the quantity of the material provided by suppliers outside the state.

(3) Provide recommendations regarding recycled plastic postconsumer material content requirements based on the availability of that material.

(4) Identify gauge thickness of all regulated bags.

(5) Determine national production versus production of a separate line for California.

42294. (a) Every wholesaler of plastic trash bags of 1.0 mil or greater thickness sold in this state shall certify to the board the name and physical location of each manufacturer from whom it purchased plastic trash bags for purposes of inclusion in the annual report required by subdivision (c).

(b) On and after January 1, 1995, every wholesaler of trash bags of 0.75 mil or greater thickness sold in this state shall certify to the board the name and physical location of each manufacturer from whom it purchased plastic trash bags for purposes of inclusion in the annual report required by subdivision (c).

(c) On or before March 1, 1994, and annually thereafter, each wholesaler shall submit a report to the board containing the certification required by this section for the preceding calendar year, together with any other information that the board may require by regulation.

42295. Each supplier, manufacturer, and wholesaler required to provide a certification or any information pursuant to this chapter shall be subject to audit by the board.

42296. (a) If any supplier provides a manufacturer with false or misleading information, the board, within 30 days of determining that fact, shall refer the false or misleading information to the Attorney General for prosecution for fraud.

(b) If any manufacturer or wholesaler provides the board with a false or misleading certification or other information, the board, within 30 days of determining that fact, shall refer the false or misleading certification or information to the Attorney General for prosecution for fraud.

42297. (a) The board may adopt such regulations as it determines are necessary to more specifically define terms for purposes of the chapter and to otherwise implement this chapter.

(b) Annually on or before July 1, the board shall publish a list of any suppliers, manufacturers, or wholesalers who have failed to comply with this chapter.

(c) (1) Any supplier, manufacturer, or wholesaler, and any of its divisions, subsidiaries, or successors, who fails to comply with this chapter, shall be ineligible for the award of any state contract or subcontract, or for the renewal, extension, or modification of an existing contract or subcontract, until the board determines that it is in compliance with this chapter.

(2) No state agency shall solicit offers from, award contracts to, or renew, extend, or modify a current contract or subcontract with, any supplier, manufacturer, or wholesaler, or any of its divisions, subsidiaries, or successors, who fails to comply with this chapter until the board determines that it is in compliance with this chapter.

CHAPTER 6. PLASTIC RECYCLING PROGRAM

ARTICLE 1. DEFINITIONS

42360. "Postconsumer plastic" means a finished plastic product which would normally be disposed of as solid waste, having completed its life cycle as a consumer item. "Postconsumer plastic" does not include manufacturing and fabrication scrap.

42361. "Recycled secondary plastic product" means any product comprised of at least 75 percent plastic material, of which the plastic component contains at least 25 percent secondary material.

42362. "Recycled postconsumer plastic product" means any product comprised of the maximum technologically feasible percentage of postconsumer plastic.

42363. "Secondary plastic material" means any plastic scrap material generated as a byproduct of a manufacturing or fabrication process for finished or unfinished plastic products.

ARTICLE 2. PLASTIC RECYCLING PROGRAM

42370. The board shall review the existing purchasing guidelines of the Office of Procurement of the Department of General Services, to identify impediments to the increased procurement of recycled products and report those impediments to the Director of the Department of General Services.

42371. The Office of Procurement, in cooperation with the board, shall develop and adopt specifications for the procurement of recycled secondary and postconsumer plastic products by July 1, 1992.

42372. The Office of Procurement, whenever the price is competitive for the purpose intended, shall procure recycled secondary and postconsumer plastic products instead of plastic products made from virgin resins. The preference shall be extended to the bidder whose products contain the highest percentage of secondary and postconsumer plastic materials, to the extent that the quality of the product is equal to that of the virgin resin counterpart and that the price is equal to or less than the virgin resin product.

CHAPTER 7. RETREADED TIRE PROGRAM ARTICLE 1. DEFINITIONS

42400. The following definitions govern the construction of this chapter.

42401. "Retreaded tire" means any tire that utilizes an existing casing for the purpose of vulcanizing new tread to such casing which meets all performance and quality standards specified in the Federal Motor Vehicle Safety Standards determined by the United States Department of Transportation.

ARTICLE 2. RETREADED TIRE PROGRAM

42410. The board shall evaluate current state and federal quality standards for retreaded tires and identify the obstacles for an increased market for retreads. The results of this evaluation and the activities that the board will undertake to increase the use of retreaded tires shall be included in the reporting requirements specified in Section 42950.

42411. The Department of General Services and the board, in consultation with representatives of the California retreading industry, shall adopt specifications for the purchase of retreaded tires by the State of California. The specifications shall designate the state minimum quality standards for retreaded tires. The specifications shall be designed to maximize the use of retreads without jeopardizing the safety of the occupants of the vehicle or the intended end use of the tire.

42412. On or before July 1, 1991, and to the extent that existing stock shall be utilized first, all tires for use on state vehicles issued for short-term use through Fleet Administration shall, at the next required installation of tires, be equipped with retreaded tires.

42413. Emergency vehicles, as defined in Section 165 of the California Vehicle Code are exempt from this provision.

42414. The number of retreaded tires purchased annually by the Department of General Services during each fiscal year shall be tabulated and forwarded to the board by August 31 every year.

42415. The board, in consultation with the Department of General Services, shall perform a study to determine if the retreads, procured by the Department of General Services, have met all quality and performance criteria of a new tire.

42416. On or before July 1, 1991, the board shall, in consultation with the retreading industry, develop a procedure to estimate the number of retreads sold in California. This information, in addition to other facts compiled on the utilization of retread tires, shall be used to evaluate the effectiveness of this program. The results of that evaluation shall be included in the report required pursuant to Section 40507.

CHAPTER 8. RECYCLED LEAD-ACID BATTERY PROGRAM

ARTICLE 1. RECYCLED LEAD-ACID BATTERY PROGRAM

42440. For the purposes of this chapter, "lead-acid battery" means any battery which is primarily composed of both lead and sulfuric acid, with a capacity of six volts or more, and which is used for any of the following purposes:

(a) As a starting battery which is designed to deliver a high burst of energy necessary to crank an engine until it starts.

(b) As a motive power battery which is designed to provide the sources of power for propulsion or operation.

© As a stationary standby battery which is designed to be used in systems where the battery acts as a source of emergency power, serving as a backup in case of failure or interruption in the flow of power from the primary source.

42441. "Recycled lead-acid battery" means any lead-acid battery which contains a minimum percentage of postconsumer recovered lead. The required minimum percentage of postconsumer recovered lead shall be determined by the board in consultation with the Market Development Commission.

42442. On or before January 1, 1991, all lead-acid batteries purchased by any state agency for, and, at the next required installation of a battery in, an automobile or light truck owned or operated by the state agency, the battery shall be a recycled lead-acid battery, to the extent that all existing stock of nonrecycled batteries have been utilized.

42443. The number of recycled lead-acid batteries purchased each year by the Department of General Services shall be tabulated and forwarded to the board on or before March 31 of each year.

CHAPTER 8.5. ELECTRONIC WASTE RECYCLING
ARTICLE 7. STATE AGENCY PROCUREMENT

42480. (a) A state agency that purchases or leases covered electronic devices shall require each prospective bidder, to certify that it, and its agents, subsidiaries, partners, joint venturers, and subcontractors for the procurement, have complied with this chapter and any regulations adopted pursuant to this chapter, or to demonstrate that this chapter is inapplicable to all lines of business engaged in by the bidder, its agents, subsidiaries, partners, joint venturers, or subcontractors.

(b) Failure to provide certification pursuant to this section shall render the prospective bidder and its agents, subsidiaries, partners, joint venturers, and subcontractors ineligible to bid on the procurement of covered electronic devices.

(c) The bid solicitation documents shall specify that the prospective bidder is required to cooperate fully in providing reasonable access to its records and documents that evidence compliance with this chapter.

(d) Any person awarded a contract by a state agency that is found to be in violation of this section is subject to the following sanctions:

(1) The contract shall be voided by the state agency to which the equipment, materials, or supplies were provided.

(2) The contractor is ineligible to bid on any state contract for a period of three years.

(3) If the Attorney General establishes in the name of the people of the State of California that any money, property, or benefit was obtained by a contractor as a result of violating this section, the court may, in addition to any other remedy, order the disgorgement of the unlawfully obtained money, property, or benefit in the interest of justice.

CHAPTER 17. CALIFORNIA TIRE RECYCLING ACT
ARTICLE 6. USE OF RECYCLED TIRES BY STATE AGENCIES

42890. "Recycled tire product" means a product with not less than 50 percent of its total content derived from recycled used tires.

42891. (a) The Department of General Services shall revise its procedures and procurement specifications for state purchases of products which are made of, or contain components which can be derived from the recycling of, used tires, including, but not limited to, rubber, oil, natural gas, carbon black, asphalt rubber, floor tiles, carpet underlays, mats, drainage pipes, garbage cans, retreaded tires, and water hoses. For those purchases, the department shall give preference, wherever feasible, to the suppliers of recycled tire products. This preference shall be 5 percent of the lowest bid or price quoted by suppliers offering similar products made from nonrecycled components.

42892. In bids in which the state has reserved the right to make multiple awards, the recycled tire product preference cost shall be applied, to the extent possible, so as to maximize the dollar participation of recycled tire product businesses in the contract award.

42893. (a) The combined amount of preference granted pursuant to this section shall not exceed one hundred thousand dollars (\$100,000) each year.

(b) Notwithstanding Section 42892, the recycled tire product preference shall not exceed fifty thousand dollars (\$50,000) if a preference exceeding that amount would preclude an award to a small business that offers a similar product made of nonrecycled tire components and is qualified in accordance with Section 14838 of the Government Code. This provision applies regardless of whether the small business is the lowest responsible bidder or is eligible for the contract award on the basis of application of the 5 percent small business preference.

42894. To encourage the use of recycled tires, the department's specifications shall require recycled tire product contracts to be awarded to the bidder whose product has the greatest percentage of recycled tire content if the fitness, quality, and price are otherwise equal.

42895. The department may adopt rules and regulations to carry out this article.

Revenue and Taxation Code

DIVISION 2. OTHER TAXES
PART 10.2 ADMINISTRATION OF FRANCHISE AND INCOME TAX LAWS
CHAPTER 2. RETURNS
ARTICLE 4. INFORMATION RETURNS

18646. (a) The head of every state agency (as defined by Section 11000 of the Government Code) entering into any contract shall make a return (at the time and in the form the Franchise Tax Board may by regulation prescribe) setting forth all of the following:

(1) The name, address, type of business entity, and taxpayer identification number of each person with which that agency entered into a contract during the calendar year.

(2) Any other information the Franchise Tax Board may require.

(b) The Franchise Tax Board may provide that this section also shall apply to any of the following:

(1) Licenses granted by state agencies.

(2) Subcontracts under contracts to which subdivision (a) applies.

(c) This section shall not apply to contracts or licenses in any class which are below a minimum amount or value which may be determined by the Franchise Tax Board for that class.

Welfare and Institutions Code

DIVISION 9. PUBLIC SOCIAL SERVICES
PART 3. AID AND MEDICAL ASSISTANCE
CHAPTER 2. CALIFORNIA WORK OPPORTUNITY AND RESPONSIBILITY TO KIDS ACT
ARTICLE 3.9. EMPLOYMENT WITH PUBLIC CONTRACTORS

11349. In complying with Section 10353 of the Public Contract Code, a contractor shall give priority consideration to qualified recipients of aid under this chapter. For purposes of this article, priority consideration means that a contractor shall hire all qualified job applicants who are recipients of aid under this chapter and who apply within five working days of the listing of the job opening with the Employment Development Department, before hiring any other applicant.

11349.1. Notwithstanding any other provision of law, participation by a recipient of aid under this chapter, shall be voluntary only, and in no event shall any person be subject to sanctions, through loss of benefits or eligibility, for not applying for, accepting, or continuing in such a position.

11349.2. Contractors shall immediately list with the appropriate local office of the Employment Development Department all suitable employment openings in positions funded by a contract subject to Section 10353 of the Public Contract Code. The Employment Development Department shall advise qualified recipients of aid of these openings and shall refer them to the contractor within five working days from the listing of the openings. The Employment Development Department shall advise recipients of aid of the voluntary nature of an application for such an opening, and that the recipients shall have priority in being hired for these openings, provided the recipient possesses all the necessary skills and meets all requirements of the employer.

11349.3. This article and Section 10353 of the Public Contract Code may be waived by the Governor, if requested to do so by the state agency involved, in order to address an emergency which threatens the public health or safety, the state's natural resources, or the economy. If an emergency waiver is granted, notification including reasons for the waiver shall be forwarded to the Joint Legislative Budget Committee within five working days.

11349.4. In the event that the State Department of Social Services determines that a waiver of any federal regulations or policies, or both, are required to fulfill the provisions of this article, the department shall seek those waivers. If the waivers necessary are not granted by March 1, 1985, the department shall report on the barriers to the waivers and the expected date of waiver approval.

DIVISION 10. STATE DEPARTMENT OF REHABILITATION
PART 2. REHABILITATION SERVICES, PROGRAMS AND FACILITIES
CHAPTER 5. REHABILITATION FACILITIES

19403. It is the intent of the Legislature to encourage state organizations, cities, counties, districts, and other political subdivisions to purchase products manufactured by and services provided by public or private nonprofit California corporations operating workshops serving individuals with disabilities whenever it is feasible to do so and the proximity of the public or private nonprofit California corporations operating workshops serving individuals with disabilities makes the purchases reasonably convenient and to provide equality of competitive advantage for organizations operating workshops for individuals with disabilities and organizations operating workshops for individuals who are blind.

19404. Any state agency, city or county, political subdivision, or district of this state may, without advertising or calling for bids, purchase materials and supplies manufactured and services provided by public or private nonprofit California corporations operating community rehabilitation programs serving persons with disabilities who have indicated an interest in supplying those goods and services and may, on an equitable basis apportion the business among the interested community rehabilitation programs, provided the goods or services meet the specifications and needs of the purchasing agency and are purchased at a fair market price, as determined by the appropriate state or local agency and provided that the public or private nonprofit California corporations comply with all of the following requirements:

(a) (1) Contract work obtained under this section shall be performed by a labor force which is comprised primarily of persons with disabilities, as measured by the percentage of person-hours of direct labor devoted to the contract work.

(2) For purposes of this paragraph, "primarily" means 75 percent or greater.

(3) Agree to make those elections permitted of any nonprofit corporation under the federal Insurance Contributions Act and the California Unemployment Insurance Code in order to provide social security and unemployment and disability benefits for its employees commencing with its first contract or purchase order under this section and continuing thereafter. In the event that the nonprofit corporation ceases to provide those benefits, any existing contract or purchase order under this section with the corporation is terminated and no further contracts or purchase orders shall be awarded to that corporation for the period of two years after the corporation ceases to provide the benefits. For the purposes of this subdivision, a person with a disability shall be considered an employee when performing productive work.

(4) Provide in its articles of incorporation that at least two of the directors of its board of directors shall be comprised of persons with disabilities or the parents, guardians, or conservators of individuals with disabilities. Directors who are also employees of the nonprofit corporation shall not participate in or be present at discussions of the board of directors concerned with labor-management contract negotiations.

(5) Provide for disabled employees of the nonprofit corporation benefits and other employer-employee agreements substantially equal to those benefits and agreements entered into between each nonprofit corporation and the representatives designated by a majority of the employees.

(6) Not commit any unfair labor practices as defined in Section 8 (a) of the National Labor Relations Act.

(7) Abide by the provisions of the Federal Fair Labor Standards Act, the Walsh-Healy Public Contract Act, the Wagner O'Day Act, and the regulations of the State Division of Industrial Welfare.

(b) For purposes of this section a "person with a disability" means any person, other than a person who is blind, who is so severely incapacitated by any physical or mental disability that he or she cannot currently engage in normal competitive employment because of the disability.

California Code of Regulations

Title 1. General Provisions Division 2. Office of Administrative Hearings Chapter 5. Procedures for Conducting Protests Under the Alternative Protest Pilot

Article 1. General Provisions

1400. Purpose; Scope of Chapter

Protests under the Alternative Protest Pilot Project (AB 1159, Chapter 762 of 1997 Statutes, Public Contract Code Division 2, Part 2, Chapter 3.6 (sections 12125 - 12130)) shall be resolved by arbitration as defined and established by this chapter.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1402. Definitions

- a. **Arbitration**, as used in this chapter, means a dispute resolution procedure in which the Department of General Services, Office of Administrative Hearings provides a neutral third party who decides the merits of a protest and issues a binding decision to the Parties.
- b. **Awardee** includes **Proposed Awardee** and means the person or entity that was a successful bidder to a Solicitation and has been, or is intended to be, awarded the contract.
- c. **Close of Business**, as used in this chapter, means 5p.m. Pacific Standard Time (PST) or Pacific Daylight Time (PDT), as applicable.
- d. **Contracting Department** means either Procurement or the department which has applied and been approved by the Department of General Services to conduct the Solicitation under the Alternative Protest Pilot Project (Public Contract Code sections 12125 - 12130.).
- e. **Coordinator** means the person designated as the Alternative Protest Pilot Project Coordinator by the Department of General Services, Procurement Division, to coordinate all aspects of the Solicitation under the Alternative Protest Pilot Project (Public Contract Code sections 12125 - 12130).
- f. **Estimated Contract Value** means the value of Protestant's bid.
- g. **Frivolous** means a protest with any or all of the following characteristics:
 1. It is wholly without merit.
 2. It is insufficient on its face.
 3. The Protestant has not submitted a rational argument based upon the evidence or law which supports the protest.
The protest is based on grounds other than those specified in section 1410.

- h. **Major Information Technology Acquisition** means the purchase of goods or services, or both, by a state agency, through contract, from non-governmental sources, that has significant mission criticality, risk, impact, complexity, or value attributes or characteristics. Pursuant to subdivision (e) of Section 11702 of the Government Code, these purchases shall include, but not be limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications that include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.
- i. **OAH** means the Department of General Services, Office of Administrative Hearings.
- j. **Party** means the Procurement Division of the Department of General Services, the Contracting Department, the Awardee, and Protestant(s).
- k. **Procurement** means the Procurement Division of the Department of General Services.
- l. **Protestant** means a person or entity that was an unsuccessful bidder to a Solicitation under the Alternative Protest Pilot Project (Public Contract Code sections 12125 - 12130) and that protests the award.
- m. *** **Small Business** means a Certified California Small Business, pursuant to Government Code Division 3, Part 5.5, Chapter 6.5 (commencing with section 14835) and Title 2, California Code of Regulations, section 1896.
- n. **Solicitation** means the document that describes the goods or services to be purchased, details the contract terms and conditions under which the goods or services are to be purchased, and establishes the method of evaluation and selection.
- o. **Solicitation File** means the Solicitation and the documents used by the Contracting Department in the Solicitation process, including documents used to evaluate bidders and select a Proposed Awardee. The Solicitation File shall remain available to the public except information that is confidential or proprietary.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Section 11702, Government Code; Sections 12125-12130, Public Contract Code.

1404. Notice of Intent to Award Contract

The Contracting Department shall post a Notice of Intent to Award Contract in a public place specified in the Solicitation, send rejection facsimiles to rejected bidders, and send Notice of Intent to Award Contract facsimiles to any bidder who made a written request for notice and provided a facsimile number. The Contracting Department shall indicate that the Solicitation File is available for inspection. The Contracting Department has the discretion to award a contract immediately, upon approval by the Director of the Department of General Services

and, if the Solicitation was for a Major Information Technology Acquisition, the Director of the Department of Information Technology.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

Article 2. Protest Procedure

1406. Notice of Intent to Protest; Service List

- a. An unsuccessful bidder who intends to protest the awarded contract pursuant to this chapter must inform the Coordinator. The Notice of Intent to Protest must be in writing and must reach the Coordinator within the number of days specified in the Solicitation, which shall be not less than 1 working day and not more than 5 working days after the posting of the Notice of Intent to Award Contract, as specified in the Solicitation. Failure to give written notice by Close of Business on that day shall waive the right to protest.
- b. On the day after the final day to submit a Notice of Intent to Protest, the Coordinator shall make a service list consisting of those bidders who did submit a Notice of Intent to Protest, the Awardee, and the Contracting Department. The Coordinator shall include addresses and facsimile numbers on this list and shall forward this service list to those bidders who submitted a Notice of Intent to Protest.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1408. Filing a Protest

- a. A protest is filed by the submission of: the Detailed Written Statement of Protest and any exhibits specified in section 1412; a check or money order made payable to the Office of Administrative Hearings for the OAH filing fee of \$50; and the arbitration deposit as specified in subsection (c) or (d) to the Coordinator by the Close of Business on the 7th working day after the time specified in the Solicitation for written Notice of Intent to Protest under section 1406. A copy of the Detailed Written Statement of Protest and exhibits must also be served on all Parties named in the service list as specified in section 1406. A Protester who fails to comply with this subsection waives Protester's right to protest.
- b. Protester(s) must provide a FAX (facsimile) number. Notification by facsimile is sufficient for service. If the Detailed Written Statement of Protest is sent to the Coordinator by facsimile, Protester must:
 1. Verify that the pages sent were all received by the Coordinator; and

2. Remit the required deposit and filing fee to Coordinator by any reasonable means. If sending via carrier, the postmark date or equivalent shall be used to determine timeliness.
- c. Each Protestant not certified as a Small Business shall make a deposit of the estimated arbitration costs, by check or money order made payable to the Office of Administrative Hearings, as determined by the Estimated Contract Value.
 1. For contracts up to \$100,000.00, the deposit shall be \$1500.00.
 2. For contracts of \$100,000.00 up to \$250,000.00, the deposit shall be \$3,000.00.
 3. For contracts of \$250,000.00 up to \$500,000.00, the deposit shall be \$5,000.00.
 4. For contracts of \$500,000.00 and above, the deposit shall be \$7,000.00.
 5. Failure to remit a timely required deposit waives the right of protest.
 6. Any refund to Protestant(s) shall be made per section 1436.
- d. Each Protestant certified as a Small Business shall submit a copy of the Small Business Certification in lieu of the deposit specified in subsection (c). If Protestant is a Small Business and the protest is denied by the arbitrator, the Contracting Department shall collect the costs of the arbitration from Protestant. If Protestant does not remit the costs due, the Contracting Department may offset any unpaid arbitration costs from other contracts with Protestant and/or may declare Protestant to be a non-responsible bidder on subsequent solicitations.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1410. Grounds for Protest

- a. The Public Contract Code, at section 12126(d) provides: Authority to protest under this chapter shall be limited to participating bidders.
 1. Grounds for Major Information Technology Acquisition protests shall be limited to violations of the Solicitation procedures and that the Protestant should have been selected.
 2. Any other acquisition protest filed pursuant to this chapter shall be based on the ground that the bid or proposal should have been selected in accordance with selection criteria in the Solicitation document.
- b. The burden of proof for protests filed under this chapter is preponderance of the evidence, and Protestant(s) must bear this burden.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1412. Detailed Written Statement of Protest

- a. The Detailed Written Statement of Protest must include the grounds upon which the protest is made, as specified in 1410(a).
- b. The Detailed Written Statement of Protest shall contain reasons why Protestant should have been awarded the contract.
 1. For Major Information Technology Acquisition protests, the Detailed Written Statement of Protest must specify each and every Solicitation procedure which was violated and the manner of such violation by specific references to the parts of the Solicitation attached as exhibits and why, but for that violation, Protestant would have been selected.
 2. For other acquisition protests, the Detailed Written Statement of Protest must specify each and every selection criterion on which Protestant bases the protest by specific references to the parts of the Solicitation attached as exhibits.
 3. For all protests, Protestant must specify each and every reason that all other bidders who may be in line for the contract award should not be awarded the contract.
- c. The Detailed Written Statement of Protest must be limited to 50 typewritten or computer generated pages, excluding exhibits, at a font of no less than 12 point or pica (10 characters per inch), on 8 1/2 inch by 11-inch paper of customary weight and quality. The color of the type shall be blue-black or black. In addition to a paper copy, the arbitrator may request that a Protestant submit such information on computer compatible diskette or by other electronic means if the Protestant has the ability to do so.
- d. Any exhibits submitted shall be paginated and the pertinent text highlighted or referred to in the Detailed Written Statement of Protest referenced by page number, section and/or paragraph and line number, as appropriate.
- e. The Detailed Written Statement of Protest shall not be amended.
- f. Protestant(s) may not raise issues in hearing which were not addressed in the Detailed Written Statement of Protest.
- g. A Protestant who fails to comply with this subsection waives Protestant's right to protest.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1414. Review by Coordinator

- a. Within 2 working days after receipt of the Detailed Written Statement of Protest, the Coordinator shall notify the Contracting Department and the Awardee of a potential protest hearing.
- b. The Coordinator shall review the Detailed Written Statement of Protest within 5 working days after receipt to preliminarily determine if the protest is

Frivolous and notify Protestant of the option to withdraw or proceed in arbitration.

1. If Protestant withdraws the protest within 2 working days after the notification by the Coordinator of a preliminary determination of Frivolousness, the Coordinator shall withdraw the preliminary finding of Frivolousness and refund Protestant's deposit and filing fee.
2. If the Protestant previously filed two protests under the Alternative Protest Pilot Project preliminarily determined Frivolous by the Coordinator but then withdrew or waived them before the arbitration decision, the Coordinator shall make final the preliminary determination of Frivolousness for the Department of General Services. ***

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1416. Review and Response by Contracting Department and Awardee

- a. The Awardee shall have 7 working days after notification by the Coordinator to submit to the Coordinator and Protestant a response to the Detailed Written Statement of Protest.
- b. The Contracting Department, in conjunction with the Coordinator, shall have 7 days after the filing of the Detailed Written Statement of Protest to send a response to Protestant and Awardee.
- c. Responses shall follow the standards set forth in section 1412(c) and (d).

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1418. Bond Requirement

- a. If the Coordinator has determined that a protest is Frivolous and the Protestant does not withdraw the protest, the Protestant shall be required to post a bond in an amount not less than 10% of the Estimated Contract Value.
- b. The percentage of the bond shall be determined by the Contracting Department and specified in the Solicitation.
- c. Protestant shall post the bond, pursuant to Chapter 2 (commencing with section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure, within 15 working days of the filing of the Detailed Written Statement of Protest or shall be deemed to have waived the right to protest.
 1. If the arbitrator determines that the protest is Frivolous, the bond shall be forfeited to Procurement and the Coordinator will impose

Sanctions.

2. If the arbitrator determines that the protest is not Frivolous, the bond will be returned to the Protestant and no Sanctions imposed.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 995.010 et. seq., Code of Civil Procedure; Sections 12125-12130, Public Contract Code.

Article 3. Arbitration Procedure

1420. Arbitration Process

Within 19 calendar days after the Notice of Intent to Award has been posted, the Coordinator shall consolidate all remaining protests under the Solicitation, and send to OAH:

- a. a copy of all Detailed Written Statements of Protest;
- b. OAH filing fees;
- c. arbitration deposits, and/or notice that any Protestant is a Small Business;
- d. Awardee responses;
- e. Coordinator/Contracting Department responses;
- f. the Solicitation File; and
- g. notice to OAH whether interpreter services will be needed for any Protestant or Awardee. OAH shall arrange interpreter services which shall be paid by the Contracting Department.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1422. Selection of Arbitrator

- a. Within 2 working days after receipt of the protest from the Coordinator, OAH shall furnish the names of ten arbitrators to Protestant(s), the Awardee, and the Coordinator. The arbitrator list shall include administrative law judges who are employees of OAH and contract private arbitrators who are not employees of the State of California. Protestant(s), the Awardee, and the Coordinator may each strike two of the ten names and notify OAH within 2 working days. Protestant(s) may also indicate if they prefer a contract arbitrator or an OAH administrative law judge. OAH may then select as arbitrator any name not stricken and shall notify Protestant(s), the Awardee, and the Coordinator within 2 working days. If all names are stricken, the Director of OAH shall appoint an arbitrator.

A proposed arbitrator shall be disqualified on any of the grounds specified in Section 170.1 of the Code of Civil Procedure for the disqualification of a

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1424. Authority of Arbitrator

- a. Arbitrators are authorized to
 1. Administer oaths and affirmations;
 2. Make rulings and orders as are necessary to the fair, impartial, and efficient conduct of the hearing; and
 3. Order additional deposits from Protestant(s) to cover additional estimated costs. If OAH does not receive the required deposit(s) in the time specified, the right to protest will be deemed waived.
- b. The arbitrator shall have exclusive discretion to determine whether oral testimony will be permitted, the number of witnesses, if any, and the amount of time allocated to witnesses.
- c. It shall be in the arbitrator's exclusive discretion to determine whether to
 1. Conduct a prehearing conference; and/or
 2. Permit cross-examination and, if so, to what extent; and/or
 3. Review documents alone for all or part of the protest.
- d. It shall be in the arbitrator's exclusive discretion to determine whether additional responses and rebuttals are to be submitted, and the timelines and page limits to be applied.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1426. Decision based in whole or in part on documents alone

Any Party may request that the arbitrator base the arbitrator's decision on documents alone. It shall be the arbitrator's exclusive discretion to do so.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1428. Prehearing Conference

- a. If the arbitrator determines that a prehearing conference is necessary, OAH shall set the time and place and notify Protestant(s), the Awardee, and Procurement at least 5 working days prior to the prehearing conference.
- b. The prehearing conference shall be held to identify and define issues in dispute and expedite the arbitration. The parties should be prepared to discuss, and the arbitrator may consider and rule on, any of the following matters applicable to the protest:
 1. Clarification of factual and legal issues in dispute as set forth in the Detailed Written Statement of Protest.
 2. The extent to which testimony shall be permitted and the extent to which cross-examination will be allowed.
 3. Identity of and limitations on number of witnesses, need for interpreters, scheduling and order of witnesses, etc.,li>Any other matters as shall promote the orderly and efficient conduct of the hearing.
- c. At the prehearing conference, Protestant(s), the Awardee, and Procurement shall deliver a written statement which contains the name of each witness a party wishes to call at hearing along with a brief written statement of the subject matter of the witness's expected testimony. If the arbitrator, in his or her exclusive discretion, allows an expert witness to be called, the party calling the witness shall provide the name and address of the expert along with a brief statement of the opinion the expert is expected to give. The party shall also attach a statement of qualifications for the expert witness.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1430. Scheduling the hearing

The arbitrator shall schedule the date, time, and place of hearing and notify all Parties.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1432. Discovery

The arbitrator has exclusive discretion to issue subpoenas and/or subpoena duces tecum.

There shall be no right to take depositions, issue interrogatories, or subpoena persons or documents.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1434. Attendance at Hearings

The Arbitration hearings shall be open to the public unless the arbitrator, in his or her exclusive discretion, determines that the attendance of individuals or groups of individuals would disrupt or delay the orderly conduct or timely completion of the proceedings.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1436. Arbitrator's Decision

- a. The final decision shall be in writing and signed by the arbitrator. It shall include a Statement of the Factual and Legal Basis for the decision, addressing the issues raised in the Detailed Written Statement(s) of Protest, and shall include an order upholding or denying the protest(s). The arbitrator's order shall not award a contract.
- b. A copy of the decision shall be sent by regular mail to Procurement, the Contracting Department, the Awardee, and Protestant(s) within 45 calendar days after the filing of the first Detailed Written Statement of Protest. In the arbitrator's exclusive discretion, this timeline may be extended for an additional 15 calendar days. The arbitrator's failure to issue a decision within the time specified by this section shall not be a ground for vacating the decision.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1437. Costs; Sanctions

- a. For protests not determined Frivolous by Procurement:
 1. If the arbitrator denies the protest, Protestant(s) will be liable for all costs of the arbitration. ***
 2. If the arbitrator upholds the protest, the Contracting Department shall pay for all costs of the arbitration and Protestant(s) will be refunded the deposit by OAH.
- b. If Procurement determined that the protest was Frivolous and the arbitrator

- affirms that the protest is Frivolous, the bond shall be forfeited to Procurement, the protest will be denied, and Protestant(s) will be liable for all costs of the arbitration. ***
- c. If Procurement determined that the protest was Frivolous and the arbitrator determines that the protest is not Frivolous, any bond(s) posted by Protestant(s) shall be returned.
 - 1. If the arbitrator denies the protest, Protestant(s) shall be liable for half of the costs of the arbitration. The Contracting Department shall pay the remaining half of the arbitration costs. ***
 - 2. If the arbitrator upholds the protest, the Contracting Department shall pay for all costs of the arbitration and Protestant(s) will be refunded the deposit by OAH.
 - d. A Protestant who withdraws his or her protest before the arbitrator's decision has been issued will remain liable for all arbitration costs up to the time of withdrawal. These costs include, but are not limited to, the arbitrator's time in preparation, prehearing conferences, and hearing the protest. If Procurement deemed the protest Frivolous, any bond posted shall be forfeited to Procurement ***.
 - e. Except as provided in (f), if any costs are determined to be payable by Protestant(s), that amount shall be subtracted from deposit(s) of Protestant(s) as ordered by the arbitrator. Any additional costs shall be billed to Protestant(s) and any refunds shall be sent to Protestant(s) by OAH.
 - f. If a Protestant is a Small Business, then the Contracting Department shall pay OAH all arbitration costs and collect the amount due from Protestant.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1438. Judicial Review

The grounds for judicial review shall be as set forth in Chapter 4 of Title 9 of Part III of the Code of Civil Procedure (commencing with section 1285).

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

1440. Transcripts

- a. A party desiring a transcript of the proceedings shall contact the OAH Transcript Clerk to make arrangements to pay for preparation of the transcript. Prior to preparation of the transcript, a deposit equal to the estimated cost of the transcript shall be paid. Preparation of the transcript will be arranged by the OAH Transcript Clerk. The deposit shall be applied

to the actual cost and any excess shall be returned to the party that submitted the request. Any balance due shall be paid by the party or a representative on behalf of the party requesting the transcript before the transcript is released to the requesting party.

- b. Unless a record of a proceeding or any portion thereof was sealed, any person may request a transcript or a recording of the proceeding. If a record of a proceeding or any portion thereof was sealed, only parties to the proceeding may request a transcript of the sealed portions, and the sealed portions shall not be disclosed to anyone except in accordance with the order sealing the proceeding or subsequent order.

Note:

Authority: Section 12126, Public Contract Code.

Reference: Sections 12125-12130, Public Contract Code.

*** refers to language deleted pursuant to the statutory changes made by SB 951, Chapter 610, Statutes of 2001, which take effect January 1, 2002. This bill deleted the provisions regarding sanctions from Public Contract Code section 12128.

In Regulation 1402, the Definition of Sanction is deleted (previously "m") and subsequent sections re-lettered. In Regulation 1414, the sentence regarding sanctions in (b)(2) is deleted. In Regulation 1437, language regarding sanctions is deleted from (a)(1), (b), (c)(1), and (d).

These changes were made through the Office of Administrative Law as nonsubstantive changes, thus no formal notice and comment procedures were needed.

California Code of Regulations

Title 2: Administration Division 2. Financial Operations Chapter 1. State Board of Control

§870. Requests for Hearings.

NOTE

Authority cited: Sections 13920 and 13921, Government Code.

HISTORY

1. New Article 17 (Sections 870 through 876) filed 9-7-55 as an emergency; designated effective 9-7-55. Amended Article 17 filed 9-12-55 as an emergency; designated effective 9-12-55 (Register 55, No. 14).
2. Amendment filed 10-21-65 as procedural and organizational; effective upon filing (Register 65, No. 20).
3. Change without regulatory effect filed 4--14--87; operative 5--14--87 (Register 87, No. 16).
4. Repealer of article 17 (sections 870-877), repealer of section and new article 17 (sections 870.1-874.1) filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).

Subarticle 1. General Provision

§870.1. Applicability.

This article applies to bid protests under Public Contract Code sections 10306 and 12102, subdivision (h).

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New subarticle 1 (sections 870.1-870.3) and section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§870.2. Applicable Regulations.

If there is any inconsistency or conflict between the provisions of article 2.5 and this article, the provisions of this article shall apply.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§870.3. Definitions.

(a) As used in this article:

(1) "Bid" shall mean:

(A) an offer in response to a solicitation for materials, supplies, or equipment purchased pursuant to article 3 (commencing with section 10300), chapter 2, part 2, division 2, Public Contract Code; or

(B) an offer in response to a solicitation for electronic data processing or telecommunications goods or services pursuant to chapter 3 (commencing with section 12100) or chapter 3.5 (commencing with section 12120), part 2, division 2, Public Contract Code.

(2) "Bidder" shall mean an individual or entity that submitted a final bid in response to a solicitation that is subject to a protest;

(3) "Declaration" shall mean a written statement that includes the following:

(A) the signature of the person making the statement;

(B) the date on which and the place where it was signed;

(C) a statement substantially similar to: "I declare under penalty of perjury under the laws of California that the foregoing is true and correct."

(4) "Detailed statement of protest" shall mean the written statement specifying the legal and factual basis for the protest under section 872.7;

(5) "Document" shall mean a writing as defined in Evidence Code section 250;

(6) "Party" shall mean:

(A) Procurement;

(B) the state agency procuring the product that is the subject of the solicitation;

(C) the protestant;

(D) the proposed awardee; and

(E) any other bidder that submitted a bid and submitted a written request to be a party, except that a bidder that filed a bid protest shall not be a party in a protest filed by another bidder.

(7) "Procurement" shall mean:

(A) the Department of General Services, Procurement Division or its successor;
or

(B) another state agency that has been delegated purchasing authority by the Department of General Services;

(8) "Proposed awardee" shall mean the bidder to whom Procurement intends to award a contract as a result of Procurement's evaluation of the protested solicitation;

(9) "Protest" shall mean a written objection by a bidder to an intended contract award proposed by Procurement that is submitted to Procurement under section 872.1 after the posting of an intent to award.

(11) "Protestant" shall mean a bidder that submitted the bid protest that is the subject of the hearing;

(12) "Response to the detailed statement of protest" shall mean a party's written submission under section 872.8;

(13) "Solicitation" shall mean the process by which Procurement requests bids;

(14) "Solicitation document" shall mean the document that describes the goods or services that are to be purchased and establishes the method that will be used to evaluate bids; and

(15) "Solicitation file" shall mean documents used by Procurement in the procurement process, including documents used to evaluate bidders and select a proposed awardee.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking with amendments and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§871. Definition of Interested Parties.

NOTE

Authority cited: Sections 13920 and 13921, Government Code. Reference: Sections 10306 and 12102(f), Public Contract Code.

HISTORY

1. Amendment filed 10-17-63 as procedural and organizational; effective upon filing (Register 63, No. 18).
2. Amendment filed 10-21-65 as procedural and organizational; effective upon filing (Register 65, No. 20).
3. Change without regulatory effect of subsection (c) filed 4--14--87; operative 5--14--87 (Register 87, No. 16).
4. Repealer filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).

Subarticle 2. Requirements for Submissions

§871.1. Document Standards.

(a) All documents submitted to the board shall be:

- (1) typewritten or computer generated;
- (2) standard 8-1/2 by 11 inches each page; and
- (3) legible.

(b) A document submitted as an exhibit during a hearing need not comply with subsection (a)(1) or (2).

(c) The board may refuse to accept any document that does not comply with this section.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New subarticle 2 (sections 871.1-871.4) and section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking with amendments and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§871.2. Documents Submitted by Facsimile.

- (a) Documents that exceed ten pages, including any attachments or exhibits, shall not be submitted to the board by facsimile.
- (b) A document submitted to the board by facsimile in violation of subsection (a) shall not be accepted.
- (c) The first page of a facsimile transmission shall be a cover page that includes:
- (1) the name of the sender;
 - (2) the name and phone number of a person to be contacted in case of transmission problems; and
 - (3) the total number of pages transmitted, including the cover page.
- (d) A party submitting a document by facsimile has the burden of proving that the entire document was successfully transmitted to the board.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking with amendments and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§871.3. Copies of Submissions.

- (a) A party shall provide the board with one original and three copies of any document, including any attachments to the document, submitted to the board.
- (b) The original document that is submitted by facsimile and three copies of the document shall be submitted to the board within two working days of the facsimile transmission.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§871.4. Service on Parties.

- (a) A party who submits a document, including correspondence, to the board shall send each party a copy.
- (b) A party shall include a declaration of proof of service that the party complied with this section.
- (c) This section shall not apply to the submission of the solicitation file to the board under section 872.4.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

- 1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
- 2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872. Notice of Hearing.

NOTE

Authority cited: Sections 13920 and 13921, Government Code. Reference: Sections 10306 and 12102(f), Public Contract Code.

HISTORY

- 1. Amendment filed 5-19-61; effective thirtieth day thereafter (Register 61, No. 10).
- 2. Amendment filed 10-21-65 as procedural and organizational; effective upon filing (Register 65, No. 20).
- 3. Amendment filed 2-25-77; effective thirtieth day thereafter (Register 77, No. 9).
- 4. Change without regulatory effect filed 4--14--87; operative 5--14--87 (Register 87, No. 16).
- 5. Repealer filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).

Subarticle 3. Pre-Hearing Procedure

§872.1. Filing Protest with Procurement.

- (a) A protestant shall file a notice of protest of the proposed award of a contract with Procurement prior to the award of a contract governed by Public Contract Code section 10306.
- (b) A protestant shall file a notice of protest of the proposed award of a contract governed by Public Contract Code section 12102, subdivision (h) with Procurement within the following time period:
 - (1) no earlier than the issuance of an intent to award a contract; and
 - (2) no later than five working days after the issuance of an intent to award a contract.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New subarticle 3 (sections 872.1-872.13) and section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.2. Submission of Protest to Board.

- (a) Procurement shall submit a notice of protest to the board within three working days of its receipt of a protest filed under section 872.1.
- (b) At the same time that Procurement submits a notice of protest to the board under subdivision (a), it shall submit a written bid protest summary to the board that shall contain all of the following information to the extent that the information is readily available in the solicitation file:
 - (1) a description of the product or service that is the subject of the protested solicitation;
 - (2) the name of the state agency on whose behalf the solicitation is being administered, or a statement that the solicitation is being administered on behalf of all the state agencies;
 - (3) the following information for each bidder that submitted a final bid:
 - (A) the name of the bidder;
 - (B) mailing address;
 - (C) voice telephone number;
 - (D) facsimile telephone number;
 - (E) name of contact person;
 - (F) job title of contact person;
 - (G) the total dollar amount of the bid, including any corrections or adjustments made by Procurement during the evaluation of the bid; and
 - (H) the total points allocated to the bid, if applicable.
 - (4) the name of the proposed awardee;
 - (5) the statutory authority governing the solicitation; and
 - (6) a statement of the basis for selection.
- (c) Procurement shall provide a copy of the bid protest summary submitted to the board under subdivision (b) to all bidders that submitted a final bid.
- (d) The Executive Officer may dismiss a protest for any of the following grounds:
 - (1) the notice of protest was untimely filed; or
 - (2) the board does not have jurisdiction over the protest.
- (e) Prior to dismissing a protest under subsection (d), the protestant shall be:
 - (1) notified of the reason for dismissing the protest; and
 - (2) given three working days to submit written materials that refute the reason for the dismissal.
- (f) The Executive Officer shall review written materials submitted under subsection (e)(2), and any other pertinent materials, and prepare a written decision that complies with section 619.1.

(g) A copy of the Executive Officer's decision shall be mailed or delivered to the protestant and Procurement.

(h) The procedure in subsections (d)-(f) is a hearing under section 617.6.

(i) A protestant may object to the use of the informal hearing process upon receipt of the notice under subsection (e)(1).

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking with amendments and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.3. Maintenance of Procurement Records.

(a) Procurement shall maintain all documents used in the evaluation and selection process, including, but not limited to:

- (1) scoring sheets;
- (2) scoring summaries; and
- (3) evaluation and selection report.

(b) The documents described in subsection (a) shall be maintained for ten working days after an intent to award a contract is issued, or until the board issues a final decision on a protest, whichever is longer.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.4. Submission of Solicitation File to Board.

(a) Within three working days of Procurement's receipt of a protest under section 872.2, Procurement shall submit two copies of each of the following to the board:

- (1) the solicitation document;
- (2) the proposed awardee's final bid;
- (3) the protestant's final bid; and
- (4) any document prepared to record or justify the selection decision, including, but not limited to:
 - (A) a document used to indicate a proposed award to a bidder who is not the lowest bidder;
 - (B) the notice of intent to award a contract; and
 - (C) the evaluation and selection report.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.5. Availability of Solicitation Documents to Parties.

- (a) Procurement shall make available for inspection by a party the documents described in section 872.4 within three working days after receiving a written request from a party.
- (b) A party shall make a request for documents under subsection (a) as soon as practicable and no later than five calendar days after receipt of the detailed statement of protest.
- (c) Procurement shall permit a party to obtain a copy of any document described in section 872.4 by one of the following methods determined by Procurement in its discretion:
 - (1) permit a party to arrange for a private copy service to make a copy of the requested documents at a time and location convenient to Procurement; or
 - (2) make a copy of the requested documents after receiving advance payment from the party for the reasonable cost of photocopying.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.6. Schedule for Submission of Written Documents.

- (a) The Executive Officer or hearing officer may establish a schedule for the submission of:
 - (1) the detailed statement of protest;
 - (2) a written request to be a party;
 - (3) a response to the detailed statement of protest;
 - (4) a rebuttal to the responses to the detailed statement of protest; and
 - (5) any other written evidence or argument.
- (c) The Executive Officer or hearing officer may require that the parties submit:
 - (1) a list of witnesses;
 - (2) a declaration from each witness the party intends to have testify that summarizes the testimony of the witness;
 - (3) a copy of each exhibit to be introduced into evidence other than items already

- submitted under section 872.4(a);
(4) a reasonable estimate of the time needed by each party to present its case;
(5) pre-hearing motions; and
(6) any information to assist the efficient administration of the hearing.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.7. Detailed Statement of Protest.

- (a) A protestant shall submit a written detailed statement of protest to the board within 10 calendar days after filing a notice of protest under section 872.1.
- (b) If a protestant fails to submit a timely detailed statement of protest, a notice of protest shall be deemed withdrawn.
- (1) If a protestant fails to submit a timely detailed statement of protest, the board shall inform all parties in writing that the protest is withdrawn and take no further action on the protest.
- (c) A detailed statement of protest shall include a full and complete statement of the relevant law and facts supporting that:
- (1) the protestant is the lowest responsible bidder meeting specifications, for a protest under Public Contract Code section 10306; or
 - (2) the protestant's bid should have been selected in accordance with the selection criteria in the solicitation document, for a protest under Public Contract Code section 12102(h).

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking with amendments and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.8. Response to Detailed Statement of Protest.

A party may submit a response to the detailed statement of protest within the time frame determined by the Executive Officer under section 872.6.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.9. Request for Extension of Time for Submitting Documents or Continuance.

- (a) A party may request a continuance of a hearing or an extension of time for the submission of a document, except for the submission of a detailed statement of protest.
- (b) A request under subdivision (a) must be in writing and submitted to the Executive Officer as soon as the need for the request is known to the party, but no later than five working days prior to the date of the hearing or deadline for the submission of documents.
 - (1) If a party is first aware of the need for a continuance request on the day scheduled for hearing, the request may be made to the hearing officer.
 - (2) A request under subdivision (a) made less than five working days prior to the date of the hearing or deadline for the submission of documents shall not be granted unless:
 - (A) it was impossible for the party to make the request any sooner; and
 - (B) the party made the request as soon as becoming aware of the need for it.
 - (c) Prior to making a request under subdivision (a), a party must contact all other parties and:
 - (1) inform the parties of the need for the request;
 - (2) determine whether or not each party will agree to the request; and
 - (3) if the request is for a continuance of a hearing, determine alternative dates available to all parties.
 - (d) A request under subdivision (a) must include a declaration that includes:
 - (1) the specific facts showing good cause for the request;
 - (2) available documentation of the specific facts showing good cause for the request;
 - (3) the date when the facts supporting the request became known to the party; and
 - (4) a statement that all parties were contacted as required by subdivision (c) and a summary of the outcome.
 - (e) A request under subdivision (a) shall be granted only if good cause exists.
 - (f) Good cause for a request under subdivision (a) exists for any of the following:
 - (1) unavailability due to the death or incapacitating illness of a party, a representative, or a member of the immediate family of a party or representative, when it is not possible to substitute another individual because of the proximity of the hearing date or deadline for submission of documents;
 - (2) failure to receive a copy of the detailed statement of protest;
 - (3) failure to receive a copy of a response to a detailed statement of protest;
 - (4) failure to make documents available to a party under section 872.5 after a timely request;
 - (5) failure to receive timely notice of the hearing date as required by section

872.11; or
(6) agreement by all parties to the continuance or extension.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.10. Dismissal for Failure to State a Basis to Uphold Protest.

(a) After reviewing the detailed statement of protest and responses of the parties, the Executive Officer shall:

- (1) schedule the protest for further hearing under section 872.11; or
- (2) recommend that the board dismiss the protest.

(b) The board may dismiss a protest for any of the following reasons:

- (1) the detailed statement of protest fails to comply with section 872.7(b);
- (2) the board does not have jurisdiction over the protest;
- (3) the detailed statement of protest fails to state a basis upon which the protest may be upheld; or
- (4) the protest is entirely without merit.

(c) If the Executive Officer recommends that the protest be dismissed under subsection (a)(2), the Executive Officer shall do all of the following:

- (1) schedule the dismissal recommendation for action by the board;
- (2) submit a written recommendation explaining the reasons for dismissing the protest without further hearing;
- (3) notify all interested parties in writing that the dismissal recommendation has been scheduled for action by the board; and
- (4) send a copy of the written recommendation required by subsection (c)(2) to the parties.

(d) The board's consideration of and action on the Executive Officer's recommendation to dismiss a protest is a hearing limited to written materials under section 617.6.

- (1) A protestant may object to the use of the informal hearing process upon receipt of the notice of recommendation of dismissal under subsection (c)(3).

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking with amendments and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.11. Assignment and Scheduling for Hearing.

- (a) The Executive Officer shall assign a protest that is not dismissed under section 872.10 to a hearing officer.
- (b) The Executive Officer shall schedule the protest for hearing and send written notice to the parties.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.12. Pre-Hearing Conference.

- (a) The hearing officer or Executive Officer may conduct a prehearing conference.
- (b) The parties shall receive reasonable written notice of the time and location of a prehearing conference.
- (c) A prehearing conference may address any of the following:
 - (1) clarification of issues;
 - (2) identity of witnesses;
 - (3) exchange of witness lists;
 - (4) limitation of the number of witnesses;
 - (5) limitation on the scope of a witness' testimony;
 - (6) limitation of time allocated to a party's presentation of evidence;
 - (7) limitation of time allocated to a party's cross-examination of witnesses;
 - (8) exchange of exhibits;
 - (9) objections to evidence;
 - (10) order of presentation of evidence;
 - (11) order of cross-examination of witnesses;
 - (12) protective orders;
 - (13) stipulations;
 - (14) dismissal for any of the grounds included in section 872.10(b);
 - (15) pre-hearing motions; and
 - (16) any other matters that will promote the orderly and efficient conduct of the hearing.
- (d) The hearing officer or Executive Officer may require the submission of prehearing statements concerning matters to be discussed at the prehearing conference.
- (e) The hearing officer may issue a prehearing order incorporating the matters determined at the prehearing conference.
 - (1) The hearing officer may direct one of the parties to prepare a prehearing order.
- (f) If the hearing officer decides to dismiss a protest under subsection (c), the hearing officer shall prepare a proposed decision for the board under section 619.3.
- (g) A prehearing conference may be conducted by electronic means.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking with amendments and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§872.13. Representation of Parties.

(a) A party that chooses to be represented shall notify the board in writing with the following information concerning the representative:

- (1) name;
- (2) address;
- (3) telephone number, including area code; and
- (4) facsimile number, including area code.

(b) Once notified that a party has a representative, the board shall send all notices to the representative until the party informs the board that the person is no longer representing the party.

(c) Only one representative for a party may actively participate in a hearing.

(1) Active participation of a representative includes:

- (A) conducting the direct examination of a witness;
- (B) conducting the cross-examination of a witness;
- (C) objecting to evidence;
- (D) responding to objections;
- (E) making offers of proof; and
- (F) arguing issues of fact or law pertaining to subsection (c)(1)(A)-(E).

(2) No more than one representative for each party may:

- (A) for each of the party's own witnesses:
 1. examine the witness;
 2. respond to objections raised during the examination; and
 3. make and argue objections during the cross-examination of the witness.
- (B) for each of the other parties' witnesses:
 1. make and argue objections during the examination of the witness.
 2. cross-examine the witness; and
 3. respond to objections raised during the cross-examination;
- (C) make an opening statement; or
- (D) make a closing argument.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking with amendments and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873. Nature of Hearings.

HISTORY

1. Amendment filed 5-19-61; effective thirtieth day thereafter (Register 61, No. 10).
2. Repealer filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).

Subarticle 4. Hearing Procedure

§873.1. Hearing by Electronic Means.

The party that requested that all or part of a hearing be conducted by electronic means under section 617.4 shall be responsible for providing, operating, and paying for all necessary equipment.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New subarticle 4 (sections 873.1-873.13) and section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.2. Record of Hearing.

- (a) Each hearing shall be reported by a certified court reporter provided by the Board or recorded by electronic means.
- (b) Any party may request the board to arrange for the preparation of a hearing transcript.
 - (1) The party requesting the preparation of a hearing transcript shall bear all costs for its preparation.
 - (2) One copy of the transcript shall be provided to the board at no cost to the board.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.3. Conduct of Hearing.

- (a) The hearing officer or Executive Officer shall determine whether the hearing shall:
 - (1) permit the presentation of oral evidence under sections 617.7 and 873.5; or
 - (2) be limited to the submission of written materials under sections 617.6 and 873.4.
- (b) The determination made under subsection (a) shall be based on the following factors:
 - (1) complexity of legal or factual issues;

- (2) necessity to evaluate credibility of witnesses for a proper determination of issues;
 - (3) parties' representation by legal counsel;
 - (4) necessity of witnesses being subject to cross examination for the proper determination of issues; and
 - (5) any other factor likely to affect a just and proper determination of issues.
- (c) The parties shall be informed of whether the hearing will be conducted under subsection (a)(1) or (a)(2).
- (d) The hearing officer may allow or request the parties to submit a post-hearing brief.
- (1) A post-hearing brief shall be limited to legal and factual arguments related to relevant issues under section 873.7 or identified by the hearing officer.
- (2) The hearing officer shall inform the parties of the deadline for the submission of a post-hearing brief.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking with amendments and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.4. Protest Limited to Written Materials.

- (a) An assertion made in the detailed statement of protest that is supported by facts alleged in the detailed statement of protest shall be presumed to be true unless rebutted by a party in the party's response to the detailed statement of protest.
- (b) An assertion made in a party's response to the detailed statement of protest that is supported by facts alleged in the response shall be presumed to be true unless rebutted by the protestant in its submission under section 872.6.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.5. Presentation of Oral Evidence.

Each party has the right to cross examine witnesses called to testify by another party.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).

2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.6. Evidence.

- (a) All relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.
 - (1) This does not limit the discretion of the hearing officer under section 617.2(b).
- (b) Evidence that qualifies under subdivision (a) may be admitted even though there is a common law or statutory rule which might make its admission improper over objection in a civil action.
- (c) Objections to and arguments about evidence may be considered when determining the weight to be given to the evidence.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

- 1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
- 2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.7. Scope of Hearing.

- (a) In a protest under Public Contract Code section 10306, the protestant must prove that it is the lowest responsible bidder meeting specifications in order for the protest to be granted.
- (b) In a protest under Public Contract Code section 12102(h), the protestant must prove that its bid should have been selected in accordance with the selection criteria in the solicitation document.
- (c) Evidence shall be limited to issues that are:
 - (1) relevant to subdivision (a) or (b), whichever is applicable; and
 - (2) identified in the protestant's detailed statement of protest; or in a party's response to the detailed statement of protest.
- (d) The protest may be denied without determining any other issues raised under subdivision (c) if:
 - (1) Procurement alleged that the protestant was not responsive to the requirements of the solicitation document in its response to the detailed statement of protest; and
 - (2) the protestant failed to prove that its bid was responsive to the requirements of the solicitation document.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

- 1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
- 2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.8. Burden of Proof.

- (a) The protestant shall have the burden of proof.
- (b) The standard of proof is a preponderance of the evidence.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

- 1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
- 2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.9. Order of Presentation of Evidence.

- (a) In a hearing permitting the presentation of oral evidence under section 873.3(a)(1), the parties shall present evidence in the following order, except as provided in subsection (b):
 - (1) the protestant;
 - (2) Procurement;
 - (3) proposed awardee; and
 - (4) other parties in an order determined by the hearing officer.
- (b) In a hearing permitting the presentation of oral evidence under section 873.3(a)(1) that concerns a solicitation in which Procurement intends to award a contract pursuant to article 3 (commencing with section 10300), chapter 2, part 2, division 2, Public Contract Code to other than the lowest bidder, the parties shall present evidence in the following order:
 - (1) Procurement;
 - (2) the protestant;
 - (3) proposed awardee; and
 - (4) other parties in an order determined by the hearing officer.
- (c) The hearing officer may require the parties to present evidence in any order that furthers the efficiency of the hearing.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

- 1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
- 2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.10. Closure of Hearing Record.

- (a) In a hearing in which post-hearing briefs were not allowed or permitted, the hearing record shall be closed upon the conclusion of testimony and presentation of any oral argument by the parties, unless otherwise ordered.
- (b) In a hearing in which post-hearing briefs were allowed or permitted, the hearing record shall close at the deadline for the submission of post-hearing

briefs, unless the hearing officer or Executive Officer orders otherwise or grants an extension under section 872.9.

(c) No evidence or argument shall be submitted to the board after the close of the hearing record.

(1) The hearing officer or Executive Officer may grant a timely written request to reopen the hearing record for good cause.

(A) A written request is timely if it is filed with the board within 24 hours of the closing of the hearing record.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.11. Failure to Appear or Proceed.

(a) The failure of a protestant to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

(b) The failure of Procurement to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of its opposition to the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

(c) The failure of the proposed awardee to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of its opposition to the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

(d) The failure of any other party to appear at a hearing, or to proceed with a hearing shall constitute a withdrawal of the party's request to participate as a party in the protest, unless an extension of time for submission of documents or a continuance of the hearing has been granted.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.12. Withdrawal of Protest.

(a) A protestant may withdraw its protest at any time prior to the board's adoption of a decision in the matter under section 619.5.

(b) The protestant shall notify the board in writing of the withdrawal of the protest.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§873.13. Withdrawal of Opposition to Protest.

(a) Procurement or the proposed awardee may withdraw its opposition to the protest at any time prior to the board's adoption of a decision in the matter under section 619.5.

(b) If Procurement withdraws its opposition to the protest under subsection (a), the protest shall be upheld without further hearing.

(c) If the proposed awardee withdraws its opposition to the protest under subsection (a), it shall not participate any further in the hearing.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§874. Conduct of Hearings.

HISTORY

1. Repealer filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).

Subarticle 5. Prohibited Conduct

§874.1. Contempt.

In addition to the grounds provided in section 618.3, a party is subject to a contempt sanction for an intentional failure or refusal, without substantial justification, to comply with a timely request under section 872.5.

NOTE

Authority cited: Section 13920, Government Code. Reference: Sections 10306 and 12102(h), Public Contract Code.

HISTORY

1. New subarticle 5 (section 874.1) and section filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).
2. Interim regulation transmitted to OAL 12-31-98 as a permanent rulemaking and filed 2-17-99; operative 2-17-99 pursuant to Government Code section 11400.20 (Register 99, No. 12).

§875. Record of Hearing.

HISTORY

1. New section filed 8-5-70; effective thirtieth day thereafter (Register 70, No. 32).
2. Repealer filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).

§876. Decisions.

HISTORY

1. Renumbering from former Section 875 filed 8-5-70; effective thirtieth day thereafter (Register 70, No. 32).
2. Repealer filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).

§877. Form of Notice.

HISTORY

1. Renumbering from former Section 876 filed 8-5-70; effective thirtieth day thereafter (Register 70, No. 32).
3. Repealer filed 12-15-97 as interim regulations under Government Code section 11400.20; operative 12-15-97 (Register 97, No. 51).

Division 2. Financial Operations
Chapter 3. Department of General Services
Subchapter 7. Office of Procurement

HISTORY

1. New section filed 2-6-78 as an emergency; effective upon filing (Register 78, No. 6).
2. Certificate of Compliance filed 5-22-78 (Register 78, No. 21).

Article 1. Rules for Prequalification of Vendors

§1890. Uniform Standards for Prequalification of Vendors.

(a) As used in this section

(1) "Vendor" means manufacturer, fabricator, wholesale distributor, broker or other persons and firms regularly engaged in the sale of materials, supplies or equipment.

(2) "Standard specification" means those purchasing standards established by the Director of General Services under authority of Public Contract Code Section 10307.

(3) "Product" means unmanufactured, partially manufactured or finished materials, supplies and equipment.

(4) "Bid invitation" means those bid invitations issued by the Department of General Services as required in Public Contract Code Section 10302.

(5) "Accounts" means businesses or governmental jurisdictions other than State agencies to whom applicant vendors are regularly supplying the product offered to the State.

(b) Vendors seeking to prequalify to receive bid invitations shall present evidence that they have the ability, resources, and facilities to adequately supply the State. The following tests shall be applied by the Department of General Services in considering vendor applications for prequalification.

(1) Requirements of the State. Lists of prequalified vendors shall be established where evidence exists that the State requires products competitively offered by applicant vendor. If, during the twelve (12) months preceding application, the aggregate purchases by the State of products substantially similar to those competitively offered are more than five thousand dollars (\$5,000) and, during this same period, any single purchase exceeded one thousand dollars (\$1,000), a list of prequalified vendors shall be established.

(2) Geographic Limits. Vendors may be prequalified to receive bid invitations for purchases for delivery within those market areas of the State in which the vendor regularly conducts his business. If a vendor applies for prequalification outside the normal market area in which his offices, warehouses or other facilities are located, he shall show evidence of satisfactory service to accounts located within each of the market areas for which he is requesting prequalification.

(3) Compliance With Standards. Where standard specifications for products have

been established by the Department, the vendor shall present evidence that the product offered complies with such standards.

(4) Experience. The vendor shall show evidence of adequate experience in selling and providing post-purchase service to accounts with requirements similar to those of the State. Vendors with less than two years of experience in selling the products offered shall provide evidence of satisfactory service to other accounts purchasing the product offered in quantities and qualities similar to that normally required by the State.

(5) Inventories. The vendor shall have readily available to him an inventory of new products and, if applicable, replacement or repair parts for the products offered and such inventories shall be of sufficient size and scope to permit timely delivery of the products and parts in compliance with the normal requirements of the State within the market areas for which the vendor requests prequalification. If such readily available inventories are less than the normal annual State requirements for the product offered within the geographic area of prequalification, the vendor shall show evidence of his ability to augment these inventories from other sources adequate to assure the timely delivery of these products.

(6) Post-Purchase Service and Technical Assistance. For products of a type normally requiring the vendor to employ or make available trained or licensed personnel to provide post-purchase service and technical assistance, the vendor shall show evidence that such personnel will be readily available on a timely basis to the State at such locations as required by the State.

(7) Licenses. The vendor shall hold all licenses and permits required by law to furnish materials, or to perform services required under the contract or purchase order.

(8) Fabrication to State Specifications. When the product offered requires manufacture or fabrication to specifications established by the State, the vendor shall show that facilities and personnel capable of manufacturing or fabricating the product in compliance with the State specification are readily available to him.

(c) Vendors seeking prequalification to receive bid notices shall complete a standard application form and questionnaire prescribed and furnished by the Department of General Services. The Department of General Services may also require such additional or supplemental information as it deems necessary.

(d) The Department of General Services may require any vendor to resubmit evidence of his qualifications at such times, and under such conditions as it may require. The question whether a particular bidder is a "responsible bidder," within the requirements of Public Contract Code Section 10301, involves an evaluation of the bidder's experience, facilities, reputation, financial resources, and other factors existing at the time of contract award. Prequalification of a vendor to be placed on a prequalified vendor list shall not foreclose the State from determining that the vendor is not a "responsible bidder" within the statutory requirements at the time of contract award for purposes of that award.

NOTE

Authority cited: Sections 10303 and 10315, Public Contract Code. Reference: Sections 10301, 10302, 10303 and 10307, Public Contract Code.

HISTORY

1. New article (§§ 1890 and 1891) filed 9-13-55 as an emergency; effective upon filing (Register 55, No. 14).

2. Amendment filed 3-11-65 as procedural and organizational; effective upon filing (Register 65, No. 4).
3. Amendment filed 12-13-67; effective thirtieth day thereafter (Register 67, No. 50).
4. Amendment filed 12-23-76; effective thirtieth day thereafter (Register 76, No. 52).
5. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
6. Repealer of subsection (b) and relettering of subsections (c)-(e) to subsections (b)-(d) filed 10-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 43).
7. Amendment of subsections (b) and (d) filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
8. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).
9. Change without regulatory effect of subsections (a)(2), (a)(4) and (d) filed 4-14-87; operative 5-14-87 (Register 87, No. 16).

§1891. Removal of Names from Bidders Lists.

NOTE

Authority cited: Sections 10303 and 10315, Public Contract Code. Reference: Section 10303, Public Contract Code.

HISTORY

1. Amendment filed 3-11-65 as procedural and organizational; effective upon filing (Register 65, No. 4).
2. Amendment of subsection (a) filed 4-7-78; effective thirtieth day thereafter (Register 78, No. 14).
3. Repealer filed 10-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 43).
4. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

Article 2. Purchases on Behalf of Local Agencies

§1895. General Provisions.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. New Article 2 (Sections 1895, 1895.1 through 1895.16) filed 10-7-64; effective thirtieth day thereafter (Register 64, No. 20).
2. Amendment filed 12-23-76; effective thirtieth day thereafter (Register 76, No. 52).
3. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
4. Repealer filed 10-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 43).
5. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.1. Authorization of Local Governing Body.

There shall be attached to every Local Agency Purchase Request a certified copy of the resolution, order, motion, or ordinance of the local governing body by law having power to purchase, authorizing submission of the purchase request by the official signing the request on behalf of the local agency.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Amendment filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.2. Charter Cities.

Cities governed by a charter specifying detailed purchasing procedures shall

follow the charter requirements, and may not avail themselves of the purchasing services of the State Department of General Services. Chartered cities submitting Local Agency Purchase Requests shall attach to each request a certification, signed by or on behalf of the city attorney, advising that the requested purchase by the State Department of General Services does not conflict with the provisions of the city charter.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Amendment filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.3. Submission of Requests.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Repealer of last sentence filed by OAL 10-22-82 pursuant to Government Code Section 11349.7(j). (Register 82, No. 43).
3. Repealer filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
4. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.4. Funding and Payment to Vendor.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Repealer filed 10-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 43).
3. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.5. Specifications Not to Restrict Competition.

To be acceptable to the Department of General Services, requests for restrictive specifications shall include a statement that the local agency has determined that the article of the specified brand or trade name is the only article which properly meets the needs of the agency, and shall include sufficient factual data in support of such local agency determination to afford the Department of General Services a reasonable basis for concurrence in such local agency determination. Requests containing restrictive specifications not adequately supported by written justification will not be processed by the Department of General Services.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Amendment filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.6. Local Bidders to Receive Bid Invitations.

Local agencies may indicate on a separate sheet attached to the local agency request form any local bidders which the requesting agency wishes to receive bid invitations. All listed local bidders shall receive bid invitations.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Amendment filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.7. F. O. B. Point--Destination.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Repealer filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.8. Cash Discount Considered in Bid Evaluation.

Discounts involving discount periods of less than 20 days shall not be included in the calculation of low bid.

NOTE

Authority cited: Section 10324, Public Contract Code. Reference: Section 10324, Public Contract Code.

HISTORY

1. Amendment filed 4-21-82; effective thirtieth day thereafter (Register 82, No. 17).
2. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
3. Amendment filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
4. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.9. Specifications Development and Sample Analysis.

Inspections or specifications development requiring expert personnel or special equipment may be undertaken by the Department of General Services and Office of Procurement staff only if the local agency requests such service. If, in the opinion of the Department of General Services, such service is required to consummate a requested purchase and the cost of the service required exceeds the normal indirect costs for similar purchases, the Department of General Services shall notify the requesting agency of this prior to processing the purchase request. No service of this type shall be undertaken without prior concurrence of the local requesting agency. An additional charge for this service based on costs to the Department of General Services (manhours, travel, laboratory or inspection fees) shall be made.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Amendment filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.10. Cost of Service--Charge to Local Agency.

(a) The Department of General Services shall charge the local agency a percentage of the purchase price which shall be computed to be the average of the costs incurred in making purchases for that local agency. When it is necessary to assume extra costs for such items as consultant services, special equipment, lab fees, or similar non-routine costs, the average costs shall not be added to the purchase cost for purposes of determining whether the State can purchase at a lower price than can the local agency.

(b) If a local agency withdraws its request prior to the date the Office of Procurement mails bids or if the Office of Procurement finds that it cannot, for some reason, accept the request for processing, no charge shall be made except for special services rendered in accordance with the preceding sections. Full charge shall be made for the Office of Procurement costs if the local agency withdraws its request subsequent to bid mailing regardless of whether a purchase order is issued.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Amendment filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.11. Delivery--Date Normally Specified.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Repealer filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.12. Confirmation of Purchase Request and Inquiries Regarding Status.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Repealer of last sentence filed 10-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 43).
3. Repealer filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
4. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.13. Final Authorization to Purchase.

It shall be the sole responsibility of the local agency to determine whether the requested purchase can be made by the State "upon the same terms, conditions and specifications at a price lower than the local agency can obtain through its

normal purchasing procedures” within the limitations of Public Contract Code Section 10324. In order that the local agency may be in a position to make this determination, the State shall furnish the local agency with a complete copy of the Invitation for Bid, showing all terms, conditions and specifications. Upon bid opening, the State shall advise the local agency of the lowest responsible bid price received and shall request direction from the local agency as to whether to purchase. The purchase shall not be completed unless the local agency then promptly replies and so directs, by telegram or otherwise, in writing. Two complete copies of the Purchase Order shall be sent to the local agency promptly upon issuance by the Office of Procurement, in order that the local agency may be in a position to properly audit and inspect the purchase.

NOTE

Authority and reference cited: Section 10324, Public Contract Code.

HISTORY

1. Amendment filed 12-23-76; effective thirtieth day thereafter (Register 76, No. 52).
2. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
3. Amendment filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
4. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).
5. Change without regulatory effect filed 4-14-87; operative 5-14-87 (Register 87, No. 16).
6. Editorial correction of Authority and Reference cites (Register 95, No. 6).

§1895.14. Cost Information.

On request, the State shall distribute cost information to local agencies in two ways, (1) a list of selected non-contract “indicator” commodities covering a range of product areas shall be periodically compiled so that local agencies have some insight into prices obtained by the State and (2) annual State contract bid invitations and notifications which contain cost and specification information adequate for local agency evaluation.

NOTE

Authority cited: Section 10324, Public Contract Code. Reference: Section 10325, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Amendment filed 3-4-83; effective thirtieth day thereafter (Register 83, No. 10).
3. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

§1895.15. Emergency Purchases--Justification.

NOTE

Authority cited: Section 14814, Government Code. Reference: Section 14809, Government Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Repealer filed 10-22-82 by OAL pursuant to Government Code Section 11349.7(j) (Register 82, No. 43).

§1895.16. Late or Defective Deliveries.

After issuance of the Purchase Order by the State Office of Procurement to the vendor, the State Office of Procurement shall have no further responsibility with regard to the purchase. It shall be the responsibility of the local agency to deal

directly with the vendor concerning any late or defective delivery.

NOTE

Authority cited: Section 10329, Public Contract Code. Reference: Section 10324, Public Contract Code.

HISTORY

1. Editorial correction of NOTE filed 10-22-82 (Register 82, No. 43).
2. Editorial correction of NOTE filed 3-8-84 (Register 84, No. 10).

Subchapter 8. Office of Small Business Procurement and Contracts

Article 1. General Provisions

§1896. Purpose of Subchapter

The purpose of this subchapter is to set forth the rules for applying the small business and the non-small business sub-contractor preferences; and the rules, roles, responsibilities and rights of businesses and the state as they pertain to small business certification.

Note:

Authority cited: § 14837 and 14843, Government Code.
Reference: § 14835, 14837, 14838 and 14839.1, Government Code.

§1896.2. Authority

The Department shall have the sole responsibility for determining the eligibility of and certifying small businesses pursuant to the provisions of the Small Business Procurement and Contract Act, Article 1 of Chapter 6.5, Part 5.5 of Division 3, Title 2, Government Code, commencing with § 14835.

When authorized by the applicant, the Department may share certification data and information with other state, federal, or local agencies for purposes of enabling the applicant to become certified as a small business with these other public agencies.

Note:

Authority cited: § 14837 and 14843, Government Code.
Reference: § 14835, 14837 and 14839.1, Government Code.

§1896.4. Definitions

The terms defined in this article shall have the following meanings whenever they appear in this subchapter:

- (a) Affiliate or affiliation refers to a relationship of direct or indirect control or shared interests, as determined in § 1896.12, between the applicant or a small business and another business.
- (b) ALJ means Administrative Law Judge, as defined in Government Code § 11502, assigned by the Office of Administrative Hearings to consider and rule on appeals of certification denial, decertification, and sanctions.
- (c) Applicant means a business that has filed an application for certification as a small business with the Department on the Small Business Certification Application, STD. 813, REV. 1/2002, which is incorporated by reference.
- (d) Assignment means a transfer of rights, responsibility, or property.
- (e) Awarding department means any agency, department, office, board, commission, institution, hospital, the California State universities and

colleges, and any other entity empowered by law to enter into contracts on behalf of the State of California.

- (f) Bid means an offer made in response to a solicitation.
- (g) Business means an entity organized for profit including, but not limited to, an individual, sole proprietorship, partnership, limited liability partnership, corporation, limited liability company, joint venture, association or cooperative; or solely for purposes of the Prompt Payment Act (Government Code 927 et seq.), a duly authorized nonprofit corporation.
- (h) Commercially useful function means:
 - (1) The contractor or subcontractor is responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing or supervising the work involved; and performing work that is normal for its business services and functions; and
 - (2) The contractor or subcontractor is not further subcontracting a greater portion of the work than would be expected by normal industry practices.
 - (3) The contractor or subcontractor is responsible, with respect to materials and supplies provided on the subcontract, for negotiating price, determining quality and quantity, ordering the material, installing (when applicable), and paying for the material itself.
 - (4) A contractor or subcontractor will not be considered as performing a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to achieve the appearance of small business participation.
- (i) Department means the Department of General Services.
- (j) Disabled veteran-owned small business means a business defined pursuant to Government Code § 14838(f)
- (k) Employee means an individual employed by a business that is either:
 - (1) Reported as an employee to the State of California, Employment Development Department (EDD) on the business's Quarterly Wage and Withholding Report or other format accepted by EDD; or
 - (2) Reported as an employee by the business on another state's report equivalent to the EDD's Quarterly Wage and Withholding Report.
- (l) Gross annual receipts means "Total Gross Receipts or Sales", less "Returns and Allowances," as reported on the business' income tax returns, as filed with the federal Internal Revenue Service.
- (m) Independently owned and operated means a business concern that independently manages and controls the day-to-day operations of its own business through its ownership and management, without undue influence by an outside entity or person that may have an ownership and/or financial interest in the management responsibilities of the applicant business or small business.
- (n) Joint Venture means an association of businesses established by written agreement to engage in and carry out a single business venture for joint profit, for which purpose they combine their efforts, property, money, skills and/or knowledge.

- (o) Local agency means any county, city, city and county, district, public authority, public agency, school district, and any other political subdivision or public corporation in the State, but does not include the State.
- (p) Manufacturer means a business as defined in Government Code § 14837(c), pursuant to the determination criteria set forth in Section 1896.12.
- (q) Microbusiness means a small business that, together with affiliates, has average annual gross receipts of two million, five hundred thousand dollars (\$2,500,000) or less over the previous three years, as adjusted by the Department pursuant to Government Code § 14837(d)(2), or is an manufacturer, as defined in Government Code § 14837, with 25 or fewer employees.
- (r) Net bid price means the verified price of a bid, after all adjustments described in the solicitation have been made.
- (s) Non-Profit Corporation means, for purposes of the Prompt Payment Act, California Government Code § 927 et. seq, a duly authorized non-profit corporation.
- (t) Non-small business means a responsible bidder that is not certified as a small business.
- (u) Principal office means where the business is headquartered and conducts the management and operations of the business.
- (v) Responsive bid means a bid that clearly substantiates compliance without material deviation with all specifications, requirements, and the terms and conditions of the solicitation.
- (w) Small business means a business that meets the eligibility requirements contained herein, that has been certified by the Department as a small business. For the purposes of these regulations, whenever the term small business is used, it means certified small business and includes microbusinesses.
- (x) Solicitation means the notification to prospective bidders that an awarding department wishes to receive bids for furnishing goods, services, information technology, or construction.

Note:

Authority cited: § 14837 and 14843, Government Code.

Reference: § 927, 927.2, 11370.2, 11502 and 14837, Government Code; § 999, Military and Veterans Code; Title 13 Code of Federal Regulations (CFR), Chapter I, Part 121, § 121.104.

Article 2. Small Business Preference

§1896.6. Application of the Small Business and Non-Small Business Subcontractor Preferences

- (a) Small businesses will be granted the five percent (5%) small business preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced, responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in § 1896.8, and when the small business:

- (1) Has included in its bid a notification to the awarding department that it is a small business or that it has submitted to the Department a complete application pursuant to § 1896.14 no later than 5:00 p.m. on the bid due date, and is subsequently certified by the Department as a small business; and
 - (2) Has submitted a timely, responsive bid; and
 - (3) Is determined to be a responsible bidder.
- (b) Non-small business bidders will be granted a five percent (5%) non-small business subcontractor preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in §1896.8, and when the non-small business bidder:
- (1) Has included in its bid a notification to the awarding department that it commits to subcontract at least twenty-five percent (25%) of its net bid price with one or more small business(es); and
 - (2) Has submitted a timely, responsive bid; and
 - (3) Is determined to be a responsible bidder; and
 - (4) Submits a list of the small business(es) it commits to subcontract with for a commercially useful function in the performance of the contract. The list of subcontractors shall include their name, address, phone number, a description of the work to be performed, and the dollar amount or percentage (as specified in the solicitation) per subcontractor.

Note:

Authority cited: § 14837 and 14843, Government Code.
Reference: § 14837 and 14838, Government Code.

§1896.8. Computing the Small Business and the Non-Small Business Subcontractor Preferences

- (a) Awards Made to the Lowest Responsive, Responsible Bidder
- (1) The five percent (5%) small business or non-small business subcontractor preferences are used for bid evaluation purposes when determining a contract award in the following situations:
 - (A) There is at least one small business competing, and award of the contract will be made to the lowest responsive, responsible bidder. The preference shall be computed as follows:
 1. Five percent (5%) is computed from the lowest, responsive and responsible bid of a business that is not a small business. This results in the preference amount.
 2. The preference amount is subtracted from the small business' bid amount.
 - (B) There is at least one non-small business competing that is subcontracting at least twenty-five percent (25%) of its net price bid to one or more small businesses, and award of the contract will be made to the lowest responsive, responsible bidder. The preference shall be computed as follows:

1. Five percent (5%) is computed from the lowest, responsive and responsible bid of a business that is not a small business, or is not subcontracting to a small business. This results in the preference amount.
2. The preference amount is subtracted from the bid of the non-small business that is subcontracting at least twenty-five percent of its net price bid to one or more small businesses.

(b) Awards Based on Highest Scored Proposal

(1) The five percent (5%) small business preference or non-small business subcontractor preferences are used for bid evaluation purposes when determining a contract award in the following situations:

(A) There is at least one small business competing, and award of the contract is to be made to the highest scored responsive bid submitted by a responsible bidder following an evaluation process that weighs factors other than price, together in a formula with price. The preference shall be computed as follows:

1. The awarding department shall specify the minimum number of points, if any, that a bid must receive in order to be deemed responsive and of acceptable quality. If a small business does not achieve the specified minimum number of points, it shall not be entitled to the five percent (5%) preference.
2. Five percent (5%) of the score of the highest scored responsive bid submitted by a responsible non-small business is computed as specified in the solicitation. The result of the calculation is a number that represents the preference points.
3. The preference points are then included in the formula as specified in the solicitation to determine the highest scored bidder.

(B) There is at least one non-small business competing that is subcontracting at least twenty-five percent (25%) of its net price bid to one or more small businesses, and award of the contract is to be made to the highest scored responsive bid submitted by a responsible bidder following an evaluation process that weighs factors other than price, together in a formula with price. The preference shall be computed as follows:

1. The awarding department shall specify the minimum number of points, if any, that a bid must receive in order to be deemed responsive and of acceptable quality. If a non-small business does not achieve the specified minimum number of points, it shall not be entitled to the five percent (5%) preference.
2. If the non-small business achieves the specified minimum number of points, five percent (5%) of the score of the highest scored responsive bid submitted by a responsible non-small business that is not subcontracting

a minimum of twenty-five percent (25%) of its net price bid to one or more small businesses is computed as specified in the solicitation. The result of the calculation is a number that represents the preference points.

3. The preference points are then included in the formula as specified in the solicitation to determine the highest scored bidder.
- (c) If, after application of the small business preference to the bid of a small business, that bid is equal to the lowest priced, responsive bid from a responsible non-small business, or equal to the highest scored bid offered by a responsible non-small business, as applicable, the contract shall be awarded to the small business for the amount of its bid.
 - (d) If, after application of the non-small business subcontractor preference, a responsible non-small business that has submitted a responsive bid is the lowest bidder, and does not displace a small business from winning the award, the contract shall be awarded to the non-small business for the amount of its bid.
 - (e) In no event shall the amount of the small business or non-small business subcontractor preferences awarded on a single bid exceed \$50,000, and in no event shall the combined cost of the small business or non-small business subcontractor preference and preferences awarded pursuant to any other provision of law exceed \$100,000. In bids that the state has reserved the right to award by line item, or make multiple awards, the small business preference shall be applied to maximize the participation of small businesses.
 - (f) In the event of a precise tie between the bid of a small business and the bid of a disabled veteran business enterprise that is also a small business, the award shall go to the disabled veteran business enterprise that is also a small business.

Note:

Authority cited: § 14837 and 14843, Government Code.

Reference: § 4535.2, 7084, 7118 and 14838, Government Code; § 12102 and 12162, Public Contract Code.

§ 1896.10. Substitution of a Small Business Subcontractor

- (a) After award of a contract based in part on the application of the Non-Small Business Subcontractor preference, the contractor must use the small business subcontractor(s) and/or supplier(s) proposed in the bid to the state unless a substitution is requested in writing to the awarding department and the awarding department approves the substitution in writing prior to the commencement of any work. The substitution request must include at least the following:
 - (1) An explanation of the reason for the substitution.
 - (2) The contractor must substitute a small business with another small business. However, if the small business substitution cannot occur, the contractor must include a written justification and the steps that were taken to try to acquire a new small business subcontractor and how that portion of the contract will be fulfilled.

- (3) A description of the work to be performed, identified both as a task(s) and as a dollar amount or percentage of the overall contract that the substituted business will perform. The substituted business(es), if approved, shall be required to perform a commercially useful function in the contract pursuant to § 1896.6.
- (b) The request for substitution of a small business and the awarding department's approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including but not limited to, the Subletting and Subcontracting Fair Practices Act (§ 4100 et seq., Public Contract Code) or any other contract requirements relating to substitution of subcontractors.
- (c) If a contractor requests substitution of its subcontractor(s)/supplier(s) by providing a written request to the awarding department in accordance with § 1896.10, the awarding department may consent to the substitution in any of the situations set forth in Public Contract Code § 4107 of the Subletting and Subcontracting Fair Practices Act.
- (d) Prior to approval of the prime contractor's request for the substitution, the awarding department, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reasons for the request to substitute. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor that has been so notified shall have five (5) working days after the receipt of the notice to submit written objections to the substitution to the awarding department. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections are filed, the awarding department shall give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by the awarding department on the prime contractor's request for substitution.
- (e) Failure of the contractor to subcontract with the small businesses listed on its bid to the state, or follow these substitution rules may be grounds for the Department to impose sanctions pursuant to Government Code § 14842.5 and §1896.16. In the event such sanctions are to be imposed, the contractor shall be notified in writing and entitled to a hearing pursuant to §§ 1896.18 and 1896.20.

Note:

Authority cited: § 14837 and 14843, Government Code.
Reference: § 14837 and 14842.5 Government Code; § 4107, Public Contract Code.

Article 3. Certification

§1896.12. Eligibility for Certification as a Small Business

- (a) To be eligible for certification as a small business, a business must meet all of the following qualifying criteria:
- (1) It is independently owned and operated; and
 - (2) The principal office is located in California; and

- (3) The officers of the business in the case of a corporation; officers and/or managers, or in the absence of officers and/or managers, all members in the case of a limited liability company; or the owner(s) in all other cases, are domiciled in California; and
- (4) It is not dominant in its field of operation(s), and
- (5) It is either:
 - (A) A business that, together with all affiliates, has 100 or fewer employees, and annual gross receipts of ten million dollars (\$10,000,000) or less as averaged for the previous three tax years, as adjusted by the Department pursuant to Government Code § 14837(d)(3); or
 - (B) A manufacturer as defined herein that, together with all affiliates, has 100 or fewer employees.
- (b) To be eligible for designation as a microbusiness, a business must meet all the qualifying criteria in subparagraph (a), and in addition, must be either:
 - (1) A business that, together with all affiliates, has annual gross receipts of two million five hundred thousand dollars (\$2,500,000) or less as averaged for the previous three tax years, as adjusted by the Department pursuant to Government Code §14837(d)(3); or
 - (2) A manufacturer as defined herein that, together with all affiliates, has 25 or fewer employees.
- (c) Joint ventures must be certified on a bid-by-bid basis. The joint venture shall not be subject to the average annual gross receipts and employee limits imposed by this subchapter. However, each individual business participating in the joint venture must be certified as a small business.
- (d) Certification Determination
 - (1) In determining if a business is eligible for certification, the Department may consider the applicant's or small business' organizational structure, operations and business relationships during the previous three tax years (or years the business has been in existence if fewer than three tax years), and may request the applicant provide copies of income tax returns as filed with the California Franchise Tax Board in addition to the required federal income tax returns and schedules, as filed with the federal Internal Revenue Service, or other documentation deemed necessary for the Department to make a final certification determination.
 - (2) In determining if a business is eligible for small business certification, the applicant business, together with all affiliates, has been in existence less than three years shall have 100 or fewer employees, and an average annual gross receipts of \$10 million or less as averaged by the number of years in existence, as adjusted by the Department pursuant to Government Code, § 14837(d)(3).
 - (3) In determining if a business is eligible for microbusiness certification, the applicant business, together with all affiliates, has been in existence less than three years shall have an average annual gross receipts of \$2.5 million or less as averaged by the number of years in existence, as adjusted by the Department pursuant to Government Code, § 14837(d)(3).

- (4) The Department's determination of whether a business is a manufacturer may be based on, but not limited to:
- (A) Whether the business, with its own facilities, performs the primary activities in transforming inorganic or organic substances into the end item being acquired, and is not a packager or, in the case of kits, a final assembler. The end item must possess characteristics that, as a result of mechanical, chemical, or human action, it did not possess before the original substances, parts, or components were assembled or transformed. The end item may be finished and ready for utilization or consumption, or it may be semi-finished as a raw material to be used in further manufacturing.
 - (B) The factors considered by the federal Small Business Administration pursuant to Title 13, Code of Federal Regulations (CFR), Chapter I, Part 121, § 121.406(b)(2).
 - (C) Whether more than fifty percent (50%) of annual gross receipts, as determined by the Department, result from the manufacture and sale of products manufactured by the business.
- (5) The Department's determination of whether the officers, owners or members of a business, as applicable, are domiciled in California may be based on, but not be limited to, a review of:
- (A) Voter registration records;
 - (B) Homeowner's property tax exemption filings;
 - (C) Driver's licenses;
 - (D) Utility billings; and
 - (E) Other documents, acts, occurrences, or events that indicate presence in California is more than temporary or transient.
- (6) The Department's determination of whether the Principal Office of a business is located in California shall be based on:
- (A) In the case of a corporation, the location where the corporate officers manage, direct and control the operations must be located within California;
 - (B) In the case of Limited Liability Companies, the location where the Manager(s) and/or Officer(s) or Members manage, direct and control the operations must be located within California;
 - (C) In all other cases, the location where the owner(s) manage, direct and control the operations must be located within California.
- (7) The Department's determination of whether a business is affiliated with another business may be based on, but not limited to, historical and current factors including ownership, management, financial and/or business relationships or ties with another business, familial relationships, contractual relationships, assignments, passage of title to goods or merchandise, and other related matters.
- (A) The Department may additionally consider the following in determining affiliation:
 1. The applicant business assigns a contract, in whole or in part, to another business.

2. There exists common management with the applicant business and another business.
 3. The applicant business and another business share facilities, equipment, systems, or employees.
 4. There is a familial relationship with the applicant business and another business and both businesses are in the same industry.
 5. A person or business has assisted the applicant business with activity to meet bond/security requirements.
- (B) The following types of business relationships shall not be considered affiliations:
1. A franchise and/or license agreement provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.
 2. A manufacturer's or service provider's representative provided that a written agreement exists between the manufacturer(s) or service provider(s) and the representative that substantiates the independent nature of the individual businesses.
- (8) The Department shall presume an applicant business not to be independently owned and operated if any of the following exists:
- (A) An outside person or business concern owns or controls, or has the power to control, fifty percent (50%) or more of the voting stock of the applicant business, or
 - (B) One or more business owners, general partners, directors, officers or members of an outside business concern controls or has the power to control or influence the day-to-day operations of the applicant business, board of directors and/or owner(s) of the applicant business.
- (9) An applicant business concern that exercises or has the ability to exercise a controlling or major influence, on a statewide basis, in a kind of business activity or field of operation in which a number of business concerns are primarily engaged, shall be determined to be dominant in its field of operation. The following criteria, among others, may be considered by the Department in determining if the applicant business is dominant in its field of operation:
- (A) Volume of business;
 - (B) Financial resources;
 - (C) Competitive status or position;
 - (D) Ownership or control of materials, processes, licenses agreements and facilities;
 - (E) Sales territory and nature of business activity.
- (e) In order to determine the eligibility of a business for certification as a small business, the Department may consider whatever information is provided to it from records gathered or held by any California state or local agency, any governmental agency of another state, or the federal government.

- (f) Businesses that have been certified by or on behalf of other governmental organizations may be eligible for certification as a small business if the organization uses substantially the same or more stringent definitions as those set forth in Government Code § 14837, and substantially the same or more stringent certification analysis process than used by the Department.

Note:

Authority cited: § 14837 and 14843, Government Code.

Reference: § 14837, Government Code; Title 13 CFR, Chapter I, Part 121, §§ 121.103 and 121.406.

§1896.14. Responsibilities of the Small Business

- (a) In order to be considered by the Department for certification as a small business, a business must:
- (1) Submit a completed application to the Department, including all required substantiating documentation and information needed by the Department to determine the business' eligibility for small business certification; and
 - (2) Respond to any deficiency notice from the Department, by the date and time specified by the Department, with all additional information requested, or provide reasons acceptable to the Department regarding why the deficiency request cannot be fulfilled; and
 - (3) Meet all eligibility requirements as set forth in this subchapter.
- (b) A small business must provide written notification to the Department of any changes in its operation or ownership during its certification period that may affect its continuing eligibility as a small business pursuant to § 1896.12. Should a small business be sold during its certification period, the certification is not transferable to the new owners. Should the new business owners choose to do so, they may submit a new application for certification.
- (c) Small business contractors and subcontractors shall perform commercially useful functions in each contract they are awarded by state agencies.
- (d) Every business certified as a small business shall be subject to reverification of status at any time. Failure by a small business to provide requested information that supports its continued eligibility as a small business, by the date and time specified by the Department, shall be grounds for decertification.

Note:

Authority cited: § 14837 and 14843, Government Code.

Reference: § 14837, 14842 and 14842.5, Government Code.

§1896.16. Certification by the Department

- (a) A business meeting the eligibility and certification requirements set forth herein shall be certified as a small business, and shall be accorded all rights and privileges due pursuant to that certification.
- (b) A small business meeting the microbusiness eligibility requirements shall also be designated a microbusiness. If the business exceeds the eligibility

requirements for microbusiness designation at any time during the certification period, the microbusiness designation shall be removed. However, as long as the business still meets the eligibility requirements for a small business, the small business certification shall not be affected for the remainder of the certification period.

- (c) The Department may certify businesses that have been certified by or on behalf of another governmental organization that uses substantially the same or more stringent definitions as those set forth in Government Code § 14837, and substantially the same or more stringent certification analysis process than used by the Department.
- (d) Certification will be valid for up to thirty-six (36) months. Prior to the end of a certification period, in its sole discretion, the Department may extend the certification period up to an additional twenty-four (24) months after certification eligibility reverification or confirmation pursuant to § 1896.12. The total period of certification, including extensions, shall not exceed sixty (60) months. At the end of a 60-month certification period, businesses may re-apply for certification. If eligible, a new certification period of up to 36 months, with extensions up to an additional 24 months, will begin.
- (e) The application of a business that does not meet the eligibility requirements for certification as a small business, or does not respond to requests from the Department for additional information, will be denied certification.
- (f) If a small business is determined by the Department to no longer meet the eligibility requirements for small business certification, the certification shall be revoked.
- (g) If it is determined by the Department that a small business is not performing a commercially useful function on a contract it has been awarded by a state agency, or on a state contract that it is performing as a subcontractor, the certification may be revoked.
- (h) Pursuant to Government Code § 14842, the Department may impose the following sanctions on a business that obtains or retains certification as a small business on the basis of having furnished incorrect, incomplete or fraudulent information to the Department, and that has been awarded one or more contracts as a result of the certification:
 - (1) The business shall pay to the state any difference between the contract amount awarded to the business and the contract amount had it been properly awarded; and
 - (2) The business shall be assessed a penalty in an amount not more than ten percent (10%) of the amount of the contract involved; and
 - (3) The business shall be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.
 - (4) The small business certification of the business shall be revoked for a period of not less than one year. For additional or subsequent violations, the suspension shall be extended for a period of up to three years.
- (i) Pursuant to Government Code § 14842, the Department may impose sanctions on a business that has obtained classification as a small business or microbusiness by reason of having furnished incorrect supporting

information or by reason of having withheld information, and that knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for classification, and that by reason of that classification has been awarded a contract to which it would not otherwise have been entitled; under conditions set forth in Government Code § 14842, the business may be prohibited from:

- (1) Entering into a state project or state contract,
 - (2) Bidding to an awarding department,
 - (3) Being a subcontractor to a contractor for an awarding department,
 - (4) Being a supplier to an awarding department.
- (j) Pursuant to Government Code §§ 14842 and 14842.5, the Department may impose sanctions on a person or business for knowing, willful and intentional violations of a penalty of not more than \$5,000.
- (k) When denying an application for certification, decertifying a small business, or imposing any sanctions, the Department will notify the business in writing. The notice shall include the reasons for the denial, decertification, or imposition of sanctions, as applicable, and provide information regarding the process for appealing the decision(s).
- (l) Any decertification issued pursuant to Government Code §§ 14842 or 14842.5 shall apply to the principals of the business, and neither the business nor the principals may re-apply for certification, either as the same business or a new business, for a period of not less than one year, nor more than two years, from the date of certification revocation.
- (m) State agencies may reject the bid of a business offering goods, information technology, or services manufactured or provided by a subcontractor if that subcontractor has been declared ineligible to transact any business with the state pursuant to Government Code § 14842.

Notes:

Authority cited: § 14837 and 14843, Government Code.

Reference: § 14837, 14842 and 14842.5, Government Code.

Article 4. Appeals

§1896.18. Appeal of Certification Denial, Decertification, or the Imposition of Sanctions

- (a) A business, having been denied certification as a small business, or having been provided written notice by the Department of its intention to decertify the business as a small business, or of its intention to impose sanctions, may appeal the Department's determination.
- (b) An appeal shall be filed with the Department by the date and time specified by the Department in its notice. The appeal shall be in writing and include a detailed written statement of the facts supporting the appeal.
- (c) Grounds for appeal shall be:
- (1) The applicant should have been certified as a small business based on the information contained in the application including, if applicable,

- supplemental material submitted to the Department upon its request, as of the date of the Department's notice of certification denial.
- (2) The business should remain certified as a small business based on the information contained in the application, including, if applicable, supplemental material submitted to the Department upon its request, as of the date of the Department's notice of decertification determination.
 - (3) Sanctions should not be imposed, because one or more of the conditions set forth in Government Code §§ 14842 or 14842.5, as applicable, did not exist.

Note:

Authority cited: § 14837 and 14843, Government Code.

Reference: § 14842 and 14842.5, Government Code.

§1896.20. Appeal Hearings.

Appeal hearings shall be conducted in accordance with the Administrative Procedure Act, Chapter 5, Part 1 of Division 3, Title 2, Government Code, commencing with § 11500, except as provided in this subchapter. It shall be the ALJ's sole discretion as to whether to conduct a hearing, or proceed with a decision based solely on the written material. If a hearing is held, the ALJ shall have discretion to limit the number of witnesses and the time allocated to each, authority to permit or limit cross-examination, and exclusive discretion to issue subpoenas and/or subpoena duces tecum. There shall be no right to take depositions, issue interrogatories, or subpoena persons or documents.

Note:

Authority cited: § 14837 and 14843, Government Code.

Reference: § 11500, 11501, 11502, 11503, 11504, 11504.5, 11505, 11506, 11507, 11507.3, 11507.5, 11507.6, 11507.7, 11508, 11509, 11511.5, 11511.7, 11512, 11513, 11514, 11515, 11516, 11517, 11518, 11518.5, 11519, 11520, 11521, 11523, 11524, 11526, 11527 and 11528, Government Code.

§1896.22. Appeal Decisions.

The decision of the ALJ shall be an order to uphold or deny the appeal, and shall include the imposition of sanctions pursuant to Government Code §§ 14842 and 14842.5, as appropriate. If the ALJ upholds the appeal of a certification denial or decertification, the Department shall certify the business as a small business pursuant to § 1896.16.

Note:

Authority cited: § 14837 and 14843, Government Code.

Reference: § 11517, 14842 and 14842.5, Government Code.

**Subchapter 9. Small and Minority Business Procurement and
Assistance Division--Target Area Contract Preference Act
Article 1. General Provisions**

§1896.30. Definitions.

As used in these rules and regulations:

- (a) "The Act" means the Target Area Contract Preference Act, commencing with Section 4530 of the California Government Code.
- (b) "Hire" means to employ on a full-time basis a person or persons for the purpose of performing a contract in accordance with the provisions of the Act.
- (c) "Contract for goods" means a contract for the purchase of materials, equipment, and supplies, but excluding a contract with a governmental entity.
- (d) "Contract for services" means a contract for the rendering of personal or consultant services, but excluding a contract with a governmental entity. For the purpose of this definition, personal services shall be construed liberally so as to include services requiring little or no discretion, such as but not limited to, blueprinting, photofinishing, laboratory analysis, automobile repairs, office equipment repairs, and reproduction services.
- (e) "False certification" means a certification which, either by omission or inclusion, the certifying party knows to be false or should have known to be false.
- (f) "California based company" means a corporation or business, of which the principal office is located in California, and the owners, or officers if the firm is a corporation, are domiciled in California.
- (g) "50 percent of the labor required" means one-half of the total employee hours needed to perform the contract involved. In computing total employee hours with respect to a contract for goods, the employee hours required for manufacturing the goods offered shall be included regardless of whether a bidder is or is not the manufacturer of the goods.
- (h) "Work force" as expressed in the Act means the total number of employees employed for performance of the contract involved.
- (i) "Lowest responsible bid or proposal" means that bid or proposal which pursuant to the criteria contained in the solicitation document would be entitled to contract award without regard to any preference.

NOTE

Authority cited: Section 4535.3, Government Code. Reference: Sections 4530, 4533, 4533.1, 4534 and 4534.1, Government Code.

HISTORY

1. New Subchapter 9 (Article 1, Sections 1896.30-1896.41) filed 8-3-82; effective thirtieth day thereafter (Register 82, No. 32).

§1896.31. Worksite Preference/Contract for Goods.

Whenever a state agency prepares an invitation for bid (IFB) for a contract for the purchase of goods, the cost of which is estimated to be in excess of \$100,000, except a contract where the worksite will be fixed by the terms of the contract,

provision shall be made in the IFB for a 5 percent preference for California based companies who certify under the penalty of perjury that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a distressed area.

NOTE

Authority cited: Section 4535.3, Government Code. Reference: Section 4533, Government Code.

§1896.32. Hiring Preference/Contract for Goods.

Where a bidder complies with the provisions of rule 1896.31 the state shall award additional preferences ranging from 1 percent to 4 percent in accordance with Government Code Section 4533.1 if the bidder certifies under penalty of perjury it will hire the specified percentage of persons with high risk of unemployment during the period of contract performance.

NOTE

Authority cited: Section 4535.3, Government Code. Reference: Section 4533.1, Government Code.

§1896.33. Application of Preferences/Contract for Goods.

Preferences provided for by sections 1896.31 and 1896.32 for a contract for goods shall be granted in an amount equal to a corresponding percentage of the lowest responsible bid: provided, however, that for contract award purposes the total of any preferences for which the low responsible bidder qualifies under any provision of law shall be deducted from the total of any preferences to which a higher bidder may be entitled.

NOTE

Authority cited: Section 4535.3, Government Code. Reference: Sections 4533, 4533.1, Government Code.

§1896.34. Worksite Preference/Contract for Services.

Whenever a state agency prepares an IFB or a request for proposals (RFP) for a contract for services, the cost of which is estimated to be in excess of \$100,000, except an IFB or a RFP where the worksite is fixed by the terms of the contract, provision shall be made in the IFB or the RFP for a 5 percent preference on the price submitted by California based companies who certify under penalty of perjury that they shall perform the contract at a worksite or worksites located in a distressed area.

NOTE

Authority cited: Section 4535.3, Government Code. Reference: Section 4534, Government Code.

§1896.35. Hiring Preference/Contract for Services.

Where a bidder complies with the provisions of rule 1896.34 the state shall award

additional preferences ranging from 1 percent to 4 percent in accordance with Government Code Section 4534.1 if the bidder certifies under penalty of perjury it will hire the specified percentages of persons with high risk of unemployment for contract performance.

NOTE

Authority cited: Section 4535.3, Government Code. Reference: Section 4534.1, Government Code.

§1896.36. Application of Preference/Contract for Services.

Preferences provided for by sections 1896.34 and 1896.35 for a contract for services shall be granted in an amount equal to a corresponding percentage of the price offered by the lowest responsible bid or the lowest responsible proposal: provided, however, that for contract award purposes the total of any preferences for which the low responsible bidder qualifies under any provision of law shall be deducted from the total of any preferences to which a higher bidder may be entitled.

NOTE

Authority cited: Section 4535.3, Government Code. Reference: Sections 4534, 4534.1, Government Code.

§1896.37. Low Bid or Proposal.

No preference provided for under Article 1 shall be granted unless the lowest responsible bid or proposal received is in excess of \$100,000: provided, further, that if a state awarding authority has reserved the right in its Invitation for Bids or Request for Proposals to award multiple contracts on the basis of individual items, no preference provided for under Article 1 shall be granted for the purpose of a multiple contract award unless the lowest responsible bid or proposal submitted for a particular individual item or group of items that is the basis for contract award, is in excess of \$100,000.

NOTE

Authority cited: Section 4535.3, Government Code. Reference: Sections 4533 and 4534, Government Code.

HISTORY

1. Editorial correction filed 8-10-82; designated effective 9-2-82 (Register 82, No. 32).
2. Editorial correction of printing error (Register 82, No. 40).

§1896.38. Assistance to Bidders/Department of General Services.

The Department of General Services with the cooperation of the State Office of Planning and Research shall assist prospective bidders in identifying those areas of the state which qualify as distressed areas under the Act and by otherwise being of general assistance.

NOTE

Authority cited: Section 4535.3, Government Code. Reference: Section 4532(d), Government Code.

§1896.39. Assistance to Bidders/Employment Development Department.

The Employment Development Department shall assist bidders seeking to certify that they will employ persons with high risk of unemployment in recruiting eligible job applicants and shall certify such applicants, except youths participating in qualified cooperative education programs who shall otherwise be certified.

NOTE

Authority cited: Section 4535.3, Government code.

§1896.40. Contract Provisions.

All IFB's and RFP's and contracts prepared by a state agency relative to contracts for goods or for services which will, or are estimated to exceed \$100,000 in cost, and which are subject to the provisions of the Act, will include either expressly or by reference the following:

- (a) Contractor or vendor agrees to comply with the requirements of the Target Area Contract Preference Act (Government Code Section 4530, et seq.) and attendant rules and regulations. (Title 2, California Administrative Code, Section 1896.30, et seq.).
- (b) Contractor or vendor agrees that the state contracting agency, or its delegee, will have the right to inspect its facilities and operations and to inspect, review, obtain, and copy all records pertaining to performance of the contract or compliance with the requirements of the Act and attendant rules and regulations. Contractor or vendor further agrees that such records shall be maintained for a period of three (3) years after final payment under the contract.
- (c) Contractor or vendor agrees with respect to a certification to hire persons with high risk of unemployment, to:
 - (1) Act in good faith for the purpose of maintaining such persons as employees for the duration of contract performance; and
 - (2) To make a reasonable effort to replace such persons, who for any reason permanently cease to be on the payroll, with other persons with high risk of unemployment; and
 - (3) To promptly report to the state contracting agency and thereafter confirm in writing within seven (7) days the names of any such persons who have been terminated or absent from work for more than three (3) consecutive work days and to communicate the reasons for the termination or absence. The contractor or vendor agrees under such circumstances to consult with the state contracting agency and the Employment Development Department with respect to replacement of such persons.

NOTE

Authority cited: Section 4535.3, Government Code. Reference: Section 4535, Government Code.

§1896.41. Hearings.

The state contracting agency shall be responsible for conducting the hearings authorized by Government Code Section 4535.1 relative to contract awards obtained due to the furnishing of a false certification. The state contracting agency may enter into an agreement for the purpose of having another state agency or office conduct such hearings and to furnish the state contracting agency with a report of findings and a recommendation.

NOTE

Authority cited: Section 4535.3, Government Code. Reference: Section 4535.1, Government Code

Subchapter 10. Small Business Office--Late Payments on State Contracts with Small Businesses

§1896.50. Small Business Definitions.

For the purpose of determining whether a business qualifies for the penalty established by Government Code Section 926.15, the following definitions of small business shall apply:

- (a) "Small Business," as used with regard to a construction contractor, means an individual or enterprise qualifying for the small business preference under Title 2, Subchapter 8, Section 1896(l) of this code.
- (b) "Small Business," as used with regard to an agreement for the purchase, lease or rental (with option to purchase) of goods, means an individual or enterprise qualifying for the small business preference under Title 2, Subchapter 8, Section 1896(m) of this code.
- (c) "Small Business" as used with regard to a Service firm means an individual or enterprise qualifying for the small business preference under Title 2, Subchapter 8, Section 1896(n) of this code.

NOTE

Authority cited: Sections 926.15(e) and 14843, Government Code. Reference: Sections 926.15 and 14839.1, Government Code; and Sections 1896(l), (m) and (n), California Administrative Code; and Section 1101, Public Contract Code.

HISTORY

- 1. New Subchapter 10 (Sections 1896.50 and 1896.51) filed 6-7-83; designated effective 6-8-83 pursuant to Government Code Section 11346.2(d) (Register 83, No. 24).
- 3. Amendment filed 10-7-85; effective upon filing pursuant to Government Code Section 11346.2(d) (Register 85, No. 41).

§1896.51. Affiliation.

The standards for, and definition of "affiliation" under this subchapter shall be the same as those established by Title 2, Subchapter 8, Section 1896(a) of this code.

NOTE

Authority cited: Sections 926.15(e) and 14843, Government Code. Reference: Sections 926.15(e), Government Code; and Section 1896(a), California Administrative Code.

Subchapter 10.5. Disabled Veteran Business Enterprise Participation Goal Program for State Contracts

§1896.60. Contract Approval.

For purpose of Public Contract Code Section 10295, an awarding department shall demonstrate compliance with the part of Article 1.5 (commencing with Section 10115) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code that concerns Disabled Veteran Business Enterprises or DVBEs and these regulations.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Section 10295, Public Contract Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

HISTORY

1. New section filed 4-16-90; operative 5-16-90 (Register 90, No. 18).
2. Amendment of subchapter heading filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
4. Change without regulatory effect amending subchapter heading, section and Note filed 4-30-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§1896.61. Definitions.

As used in these regulations:

- (a) For the purposes of the DVBE participation program as related to contracts, the term “administering agency” means the Office of Small and Minority Business within the Department of General Services.
- (b) The term “awarding department” shall have the meaning set forth in Section 10115.1(a) of the Public Contract Code.
- (c) The term “bidder” means any person or entity, persons, firm, sole proprietorship, partnership, corporation, DVBE combination, or joint venture thereof making an offer, a proposal, or submitting a response to a solicitation competitively or non-competitively, for the purpose of securing a contract with an awarding department.
- (d) The term “considered” as used in Section 10115.2(b)(5) of the Public Contract Code means that the bidder made a bona fide effort to carry out all actions with regard to DVBEs specified in Section 10115.2(b)(1-5) (except Section 10115.2(b)(3) of the Public Contract Code when the awarding department has waived the advertising requirements of Section 10115.2(b)(3) of the Public Contract Code in the solicitation), and reviewed DVBE responses and carefully evaluated and documented the reasons for not selecting such potential subcontractors. The bidder must consider all responding subcontractors for a specified service based upon the same information and evaluation criteria.
- (e) The term “contract” means any agreement as defined by Section 10115.1(b) of the Public Contract Code. It does not include agreements such as those executed pursuant to Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code; subvention aid or local assistance contracts including those contracts providing assistance to local governments

and aid to the public directly or through an intermediary, such as a non-profit corporation organized for that purpose; agreements with other governmental entities; and agreements with sheltered workshops (as described in Welfare and Institutions Code Section 19404, et seq.).

(f) The term "control" as applied to "ownership (or management) and control" of DVBE means the DVBE owner(s) and/or DVBE manager(s) must demonstrate expertise specifically in the firm's field of operation in controlling the overall destiny and the day-to-day operations of the firm. Office management, clerical, or other experience unrelated to the firm's field of operations is insufficient to establish control. This control is comprised of two parts -- Managerial and Operational.

(1) To have managerial control, the DVBE owner(s) and/or DVBE manager(s) must demonstrate responsibility for the critical areas of the firm's operations. The DVBE owner(s) and/or DVBE manager(s) must be personally responsible for at least one of the following:

(A) Negotiations, execution and signature of contracts; or

(B) Execution (signature) of financial (credit, banking, bonding) transactions and agreements.

(2) To have operational control, the DVBE owner(s) and/or DVBE manager(s) must demonstrate that he/she independently makes basic decisions in daily operations. Absentee or titular ownership by the DVBE owner(s) and/or DVBE manager(s) must include an active role in controlling the business. Control may be demonstrated in various ways such as:

(A) DVBE owner(s) and/or DVBE manager(s) have the ability to appoint or elect and to remove the majority of the Board of Directors;

(B) No formal or informal restrictions exist to limit voting power or control of the DVBE owner(s) and/or DVBE manager(s);

(C) No third party agreements restrict control by DVBE owner(s) and/or DVBE manager(s);

(D) DVBE owner(s) and/or DVBE manager(s) possess the requisite experience, education, knowledge and qualifications in the firm's field of operations;

(E) Salary/profits of DVBE owner(s) and/or DVBE manager(s) are commensurate with their ownership interest;

(F) DVBE owner(s) receive at least 51% of any dividends paid by the firm including distribution upon liquidation; and

(G) DVBE owner(s) are entitled to 100% of the value of each share of stock they hold if sold.

(H) DVBE owner(s) and/or DVBE manager(s) control the operation of the firm in the following areas:

1. Financial

2. Bonding

3. Supervision - direct responsibility for subordinates

4. Work force - direct responsibility for subordinates or subcontractors

5. Equipment

6. Materials

7. Facilities (office/yard)

(g) The term "Department" or "DGS" means the Department of General Services.

(h) The term "disabled veteran" means a veteran of the military, naval or air

service of the United States with a service-connected disability who is a resident of the State of California.

(i) The term “disabled veteran business enterprise” or “DVBE” means a business concern that the Office of Small and Minority Business has certified as a DVBE.

(j) The term “joint venture” or “DVBE combination” means two or more parties who join together for a common business enterprise in which profits, losses and control are shared. The agreement between the parties must be set forth in writing.

(k) The term “Disabled Veteran Business Enterprise (DVBE) Focus and Trade Paper” means a publication that meets all of the criteria of Sections 1896.61(m) and (q).

(l) The term “DVBE contractor, subcontractor or supplier” means any person or entity that satisfies the ownership (or management) and control requirements of Section 1896.61(f); is certified in accordance with Section 1896.70; and provides services or goods that contribute to the fulfillment of the contract requirements by performing a commercially useful function. A DVBE contractor, subcontractor or supplier is considered performing a commercially useful function when it meets the following criteria:

(1) The business concern is: responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing or supervising the work involved; and performing work that is normal for its business services and functions, and

(2) The business concern is not further subcontracting a greater portion of the work than would be expected by normal industry practices.

(m) The term “papers focusing on disabled veteran business enterprises” used in Section 10115.2(b)(3) of the Public Contract Code or focus papers means any publication that meets all of the following criteria:

(1) has an orientation relating to disabled veteran business enterprise(s);

(2) is known and used by members of the disabled veteran business enterprise community;

(3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at disabled veteran business enterprises; and

(4) is available within the geographic area for which the advertisement is placed and for which the services are to be performed.

(n) The term “participation goal” or “goal” means a numerically expressed DVBE objective that bidders are required to make efforts to achieve in accordance with Section 10115(c) of the Public Contract Code.

(o) The term “solicitation” means an announcement to bidders describing a specific purchase or contracting opportunity and its requirements, and which invites bidders to submit offers in response thereto. Such announcements may include, but are not limited to: Invitations for Bid (IFB), Requests for Proposals (RFP), Requests for Qualifications or Request for Quotation (RFQ), or Price Requests.

(p) The term “Statutory Disability” as it is used in this Subchapter means a service-connected disability enumerated under Title 38, United States Code, Section 1114.

(q) The term “trade paper” used in Section 10115.2(b)(3) of the Public Contract Code means a publication that meets all of the following criteria:

- (1) has a business orientation relating to the trade or industry for which the advertisement is being placed;
 - (2) is known and used by members of that trade or industry;
 - (3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at that trade or industry; and,
 - (4) is available within the geographic area for which the advertisement is placed and for which the services are to be performed.
- (r) The term “veteran with a service-connected disability” means the United States Department of Veterans Affairs or United States Department of Defense has declared that the veteran is currently 10 percent or more disabled as a result of service in the armed forces.

NOTE

Authority cited: Sections 14600 and 14615, Government Code. Sections 2052, 10115.3(b) and 10295, Public Contract Code; Section 999.5(b), Military and Veterans Code. Reference: Sections 10115, 10115.1, 10115.2, 10115.3, 10115.5 and 10295, Public Contract Code; and Section 999, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

HISTORY

- 1. New section filed 4-16-90; operative 5-16-90 (Register 90, No. 18).
- 2. New subsection (e) filed 12-16-91 as an emergency; operative 12-16-91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 4-14-92 or emergency language will be repealed by operation of law on the following day.
- 3. Certificate of Compliance as to 12-16-92 order including amendment of Note and subsection (e)(2) transmitted to OAL 4-10-92 and filed 5-22-92 (Register 92, No. 22).
- 4. Amendment of section and Note filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
- 5. Amendment of section and Note refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
- 6. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 with amendment of text and Note and filed 8-5-94 (Register 94, No. 31).
- 7. Editorial correction amending subsection (e) (Register 94, No. 39).
- 8. Change without regulatory effect amending section and Note filed 4-30-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§1896.62. Disabled Veteran Business Enterprise (DVBE) Participation Goals.

- (a) The disabled veteran business enterprise participation program goal established in Public Contract Code Section 10115(c) applies to the overall annual expenditures of the awarding department for contracts as defined by Section 1896.61(e), Subchapter 10.5, Title 2 of the California Code of Regulations.
- (b) The director of the awarding department may establish a participation goal either less than or in excess of the statutory goal of 3 percent DVBE(s) for a specific solicitation, project or contract as long as the overall goal of 3 percent DVBE(s) is satisfied as defined by Section 10115(c) of the Public Contract Code.
- (c) To qualify as a responsive bidder for contracts awarded as the result of a solicitation process when DVBE participation goal is specified, in addition to meeting all other technical and/or administrative requirements specified in the solicitation, a bidder must document in the bidder's response to the solicitation, at or prior to the time of bid opening, that the bidder made a commitment to fulfill the participation goal, or made a good faith effort to meet the participation goal.
- (d) Except as may be changed by Section 1896.62(b), the requirement for

satisfying the participation goal shall be deemed to have been met if a bidder:

- (1) Is a disabled veteran business enterprise and is committed to perform not less than 3 percent of the dollar amount of the bid with its own forces, or in combination with those of other disabled veteran business enterprises; or
- (2) Is a non-DVBE and is committed to use DVBE(s) for not less than 3 percent of the dollar amount of the bid response.

(e) The awarding department shall find that the DVBE combination or joint venture has met the requirements for the participation goal providing the DVBE combination or joint venture satisfies all of the following conditions:

- (1) A bidder uses the DVBE status of the bidder's joint venture partner(s) to meet the participation goal; and
- (2) Each DVBE joint venture partner used to satisfy the participation goal also satisfies the 51% ownership and/or control requirements for status as a DVBE as an independent enterprise outside the joint venture; and
- (3) Each DVBE joint venture partner is responsible for a clearly defined portion of the work, identified both as a task and as a percentage share/dollar amount of the overall project/response to the solicitation. The goal attainment claimed in the response to the solicitation cannot exceed the percentage share of the work to be performed by each DVBE partner as claimed in the joint venture agreement.
- (4) If the DVBE combination or joint venture bidder/contractor is unable to satisfy the goal of 3 percent DVBE, using any one of its joint venture partners, the DVBE combination or joint venture bidder/contractor will satisfy the goal as prescribed in Section 1896.62(d). If unable to satisfy the goal the DVBE combination or joint venture bidder/contractor will conduct a good faith effort as prescribed in Section 1896.63.

(f) The bidder's authorized representative shall

- (1) list the name of each DVBE firm proposed for use in the performance of the contract;
- (2) list the percentage share/dollar amount of the overall contract to be performed by each DVBE; and
- (3) describe the task to be performed by such DVBE.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code; and Section 999.5(b), Military and Veterans Code. Reference: Sections 10115 and 10115.2, Public Contract Code; and Section 999(g) and (i), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

HISTORY

1. New section filed 4-16-90; operative 5-16-90 (Register 90, No. 18).
2. Amendment of section heading, text and Note filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading, text and Note refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction designating subsection (g) (Register 94, No. 8).
5. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 with amendment of text and Note and filed 8-5-94 (Register 94, No. 31).
5. Change without regulatory effect amending section and Note filed 4-30-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§1896.63. Good Faith Effort.

(a) Bidders must satisfy the good faith effort requirement (unless goal is met) at the time of bid opening.

(b) If the participation goal is not met, the bidder shall comply with the requirements of Section 10115.2(b)(1) through (5) including (3) unless the advertising requirements of that subsection are waived by the awarding department. The awarding department shall require documentation of that compliance in the solicitation document. The bidder shall submit documentation of that compliance with the bid.

(c) The awarding department shall evaluate the effort made by the bidder to seek out and consider disabled veteran business enterprises as potential subcontractors for services, materials, labor, supplies or equipment. In evaluating such effort, the awarding department shall require written evidence that the bidder completed the actions specified in Public Contract Code Section 10115.2(b)(1), (2), (4), and (5). Unless the awarding department waived the advertising requirement, the written evidence must also include advertising as specified in Section 10115.2(b)(3).

Based on this evaluation, the awarding department, in its sole discretion, may find that the bidder has met the good faith effort requirement.

(d) Unless it waives the good faith effort advertising requirements of Section 10115.2(b)(3) of the Public Contract Code, the awarding department shall require that:

(1) Bidders must advertise in trade papers disabled veteran business enterprise focus papers, as specified in the solicitation. Trade papers and disabled veteran business enterprise focus papers as defined in Section 1896.61 must be acceptable to the awarding department.

(2) Unless otherwise specified in the solicitation document, bidders must publish advertisements in trade and focus publications at least 14 calendar days prior to the due date of the response to the solicitation. (Awarding departments may waive the advertising requirement or establish an advertising period of less than 14 calendar days if time limits do not permit a 14 day advertising period.)

(3) Solicitation documents must contain one of the following:

(A) The Office of Small and Minority Business (OSMB) Resource Packet for trade and focus publications; or

(B) A list of trade and focus publications specific to the business of the awarding department; or

(C) The following paragraph:

In accordance with Public Contract Code Section 10115.2(b)(3), bidders must advertise in trade and focus publications unless the DVBE goal is satisfied. The Office of Small and Minority Business (OSMB) publishes a list of trade and focus publications to assist bidders in meeting these contract requirements. To obtain this list, please contact the OSMB and request the "Resource Packet". The OSMB may be contacted at:

(Awarding Department to list current address and telephone number of OSMB.)

NOTE

Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295,

Public Contract Code, and Section 999.5(b), Military and Veterans Code. Reference: Sections 10115 and 10115.2, Public Contract Code; and Section 999.5(b), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ____ (March 9, 1998).

HISTORY

1. New section filed 4-16-90; operative 5-16-90 (Register 90, No. 18).
2. Amendment of section and Note filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed **by** operation of law on the following day.
3. Amendment of section and Note refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 with amendment of subsection (a), new subsection (b) and subsection redesignation, and amendment of subsections (d)(1) and (d)(3)(C) filed 8-5-94 (Register 94, No. 31).
6. Change without regulatory effect amending section and Note filed 4-30-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§1896.64. Contract Awards.

(a) If a bidder fails to meet the “good faith effort” requirement of Section 1896.63, such bidder shall be deemed not to be a responsive bidder for purposes of an awarding department’s evaluation of an award of contract and is thus ineligible for an award. No provision of these regulations, however, shall be deemed to require the awarding department to make an award.

(b) With respect to invitations for bid for the purchase of supplies or equipment pursuant to the provisions of Article 3 of Chapter 2 of Part 2 of Division 2 of the Public Contract Code (commencing with Section 10301) or the acquisition of goods and services pursuant to the provision of Chapter 3 of Part 2 of Division 2 of the Public Contract Code (commencing with Section 12100) where the awarding department has reserved the right to make multiple awards or a single contract award, a bidder shall be deemed responsive regarding the requirement for the making of a good faith effort if there would be compliance with the provisions of Section 1896.63 based on award for a single contract, notwithstanding such bidder may be unable to achieve compliance to meet the established goal if the awarding department exercises the right to make multiple awards.

(c) Substitution of a DVBE

(1) After award of a contract, the successful bidder/contractor must use the DVBE subcontractor(s) and/or supplier(s) proposed in the solicitation response to the State per Section 1896.62 unless a substitution is requested. The bidder/contractor must request the substitution in writing to the awarding department and the awarding department must have approved the substitution in writing. At a minimum the substitution request must include:

(A) A written explanation of the reason for the substitution; and if applicable, the contractor must also include the reason a non-DVBE subcontractor is proposed for use.

(B) A written description of the business enterprise to be substituted, including its business status as a sole proprietorship, partnership, corporation or other entity, and the DVBE certification status of the firm, if any.

(C) A written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall contract that the substituted firm will perform.

(2) The request for substitution of the DVBE subcontractor/supplier must be approved in writing by the awarding department prior to commencement of any work by the subcontractor/supplier.

(3) The request for substitution of a DVBE and the awarding department's approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (Sections 4100 et seq., Public Contract Code) or any other contract requirements relating to substitution of subcontractors.

(d) Approval by Awarding Department of Contractor's Request for DVBE Substitution

If a contractor requests substitution of its DVBE subcontractor(s)/supplier(s) by providing a written request to the awarding department in accordance with Section 1896.64(c), the awarding department may consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract, when that written contract based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes bankrupt or insolvent, or goes out of business.

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor.

(5) When the prime contractor demonstrated to the awarding department, or its duly authorized officer, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to any applicable licensing requirement of any regulatory agency of the State of California.

(7) When the awarding department, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the process of the work.

Prior to approval of the prime contractor's request for the substitution, the awarding department, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding department on the prime contractor's request for substitution.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; Sections 10115.3(b) and 10295, Public Contract Code; and Section 999.5(b), Military and Veterans Code. Reference: Sections 10115.1 and 10115.2, Public Contract Code; and Sections 999(i) and 999.5(b), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

HISTORY

1. New section filed 4-16-90; operative 5-16-90 (Register 90, No. 18).
2. New subsection (c) and amendment of Note filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
3. New subsection (c) and amendment of Note refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 with amendment of subsection (b), repealer and new subsection (c)(1), and amendment of subsections (c)(1)(B)-(C) and Note filed 8-5-94 (Register 94, No. 31).
5. New subsection (d) and amendment of Note filed 8-5-94 as an emergency; operative 8-5-94 (Register 94, No. 31). A Certificate of Compliance must be transmitted to OAL by 12-3-94 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction amending subsection (d)(7) (Register 94, No. 39).
7. Certificate of Compliance as to 8-5-94 order including amendment of subsection (d)(6) transmitted to OAL 11-4-94 and filed 12-20-94 (Register 94, No. 51).
8. Change without regulatory effect amending section and Note filed 4-30-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§1896.65. Certification by Authorized Representative.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code, Section 999.5(b), Military and Veterans Code. Reference: Sections 2052, 10115.1 and 10115.10, Public Contract Code; and Section 999(g), Military and Veterans Code.

HISTORY

1. New section filed 4-16-90; operative 5-16-90 (Register 90, No. 18).
2. Amendment of section heading, text and Note filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
3. Amendment of section heading, text and Note refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 with repealer and new subsection (a) and subsection redesignation, amendment of subsections (b)-(b)(1), (c)-(c)(1), and new subsection (c)(2) filed 8-5-94 (Register 94, No. 31).
7. Change without regulatory effect repealing section filed 4-30-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§1896.66. Contract Audits.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Section 10115.3(a), Public Contract Code.

HISTORY

1. New section filed 4-16-90; operative 5-16-90 (Register 90, No. 18).
2. Renumbering of former section 1896.66 to section 1896.75 filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
3. Renumbering of former section 1896.66 to section 1896.75 refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 and filed 8-5-94 (Register 94, No. 31).

§1896.67. Adjudicatory and Investigatory Procedures.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Sections 10115.2 and 10115.3(a), Public Contract Code.

HISTORY

1. New section filed 4-16-90; operative 5-16-90 (Register 90, No. 18).
2. Renumbering of former section 1896.67 to section 1896.80 filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
3. Renumbering of former section 1896.67 to section 1896.80 refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 and filed 8-5-94 (Register 94, No. 31).

§1896.68. Appeal of Determination.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115.1, 10115.10 and 10295, Public Contract Code.

HISTORY

1. New section filed 12-16-91 as an emergency; operative 12-16-91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 4-14-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-16-92 order including amendment of section, designation of subsections (a)-(g), and amendment of Note transmitted to OAL 4-10-92 and filed 5-22-92 (Register 92, No. 22).
3. Change without regulatory effect repealing section filed 4-30-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§1896.70. DVBE Certification.

In order to obtain DVBE certification under this Subchapter, a business concern must do all of the following:

(a) Meet DVBE requirements set forth in this Subchapter and Article 6 (commencing with Section 999) of Chapter 6, Division 4 of the California Military and Veterans Code; and

(b) Provide the following documentation to the Office of Small and Minority Business, no later than five o'clock p.m. (5:00 p.m.) of the bid opening day, unless the regulations (Section 1896 et seq., Title 2, California Code of Regulations) implementing the Small Business Procurement and Contract Act (SBPCA) specify a different time, in which case the submission time for application as identified in the SBPCA shall prevail:

(1) A completed Small Business and/or Disabled Veteran Business Enterprise Certification Application, STD. 812 (as required by Section 1896.95(b)) which is made a part of this regulation; and

(2) A copy of an Award of Entitlement letter from the United States Department of Veterans Affairs or United States Department of Defense which was issued within six (6) months of the date a new certification is sought and which certifies or declares the existence of a service-connected disability of at least 10 percent. In the case of renewal of a DVBE certification, the applicant(s) shall certify in writing that there has been no change in the status of applicant's service-connected disability. In the event that an applicant is seeking certification on the basis of a service-connected Statutory Disability, subsequent renewal of the

certification will require that the applicant certify in writing that there has been no change in the status of the service-connected disability.

(c) In reviewing an applicant for, or the validity of a DVBE certification, the Office of Small and Minority Business may require the DVBE applicant to submit additional documents and information that support eligibility to be a certified DVBE.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; Section 999.5(b), Military and Veterans Code, and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Sections 10115.1 and 10115.10, Public Contract Code; and Section 999(g), Military and Veterans Code.

HISTORY

1. New section "Definitions" filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. New section "DVBE Certification" filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
3. Change without regulatory effect renumbering former section 1896.70 "Definitions" to section 1896.100 filed 1-27-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 4).
4. Editorial correction restoring inadvertently deleted section "DVBE Certification" (Register 94, No. 5).
5. New section "DVBE Certification" refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
6. Editorial correction deleting section heading, Note and History for former section 1896.70 "Definitions" and amending History notes (Register 94, No. 14).
7. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 with repealer of subchapter and article headings and amendment of subsections (b)-(b)(1) filed 8-5-94 (Register 94, No. 31).
8. Editorial correction amending subsection (b)(1) (Register 94, No. 39).

§1896.71. Worksite Preference/Contract for Goods.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.71 to section 1896.101 and repealer of section 1896.71 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.72. Hiring Preference/Contract for Goods.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.72 to section 1896.102 and repealer of section 1896.72 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.73. Application of Preferences/Contract for Goods.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.73 to section 1896.103 and repealer of section 1896.73 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.74. Worksite Preference/Contract for Services.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.74 to section 1896.104 and repealer of section 1896.74 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.75. Contract Audits.

When an awarding department awards a contract subject to participation goals or good faith effort in accordance with Public Contract Code Section 10115.2, it shall include a provision which in substance provides the following:

Contractor or vendor agrees that the awarding department or its delegatee will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor or vendor agrees to provide the awarding department or its delegatee with any relevant information requested and shall permit the awarding department or its delegatee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation for the purpose of determining compliance with Public Contract Code Section 10115 et seq. and Title 2, California Code of Regulations, Section 1896.60 et seq. Contractor or vendor further agrees to maintain such records for a period of three (3) years after final payment under the contract.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Section 10115.3(a), Public Contract Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

HISTORY

1. New section "Hiring Preference/Contract for Services" filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. Renumbering of former section 1896.66 "Contract Audits" to section 1896.75 filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
3. Change without regulatory effect renumbering former section 1896.75 "Hiring Preference/Contract for Services" to section 1896.105 filed 1-27-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 4).
4. Renumbering of former section 1896.66 "Contract Audits" to section 1896.75 refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction deleting section heading, Note and History for former section 1896.75 "Hiring Preference/Contract for Services" and amending History notes (Register 94, No. 14).
6. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 with amendment of first paragraph filed 8-5-94 (Register 94, No. 31).
9. Change without regulatory effect amending second paragraph and Note filed 4-30-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§1896.76. Application of Preferences/Contract for Services.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.76 to section 1896.106 and repealer of section 1896.76 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.77. Low Bid or Proposal.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. New section filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.77 to section 1896.107 and repealer of section 1896.77 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.78. Assistance to Bidders/Department of General Services.

NOTE

Authority cited: Section 7099, Government Code. Reference: Sections 7082, 7095 and 14600, Government Code.

HISTORY

1. New section filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.78 to section 1896.108 and repealer of section 1896.78 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.79. Assistance to Bidders/Department of Commerce.

NOTE

Authority cited: Section 7099, Government Code. Reference: Sections 7082, 7086 and 7095, Government Code.

HISTORY

1. New section filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.79 to section 1896.109 and repealer of section 1896.79 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.80. Adjudicatory and Investigatory Procedures.

Nothing in these regulations shall be construed to impair the right of the awarding department or the Department to initiate adjudicatory or investigatory procedures available for the purpose of ensuring compliance with the requirements of Public Contract Code Section 10115, et seq. and Section 999 et seq. of the Military and Veterans Code and attendant rules and regulations.

Prior to reporting an alleged violation of Public Contract Code Section 10115.10 to the DGS, Office of Small and Minority Business, awarding departments shall investigate the alleged violation and shall prepare a written report of their findings. The written report shall also include a recommendation for action to be

taken commensurate with the awarding department's findings and shall be submitted to the Office of Small and Minority Business within 60 working days of the notification to the awarding department of the alleged violation.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code; and Section 999.5(b), Military and Veterans Code. Reference: Sections 10115.2, 10115.3(b), and 10115.10, Public Contract Code; and Section 999.9, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

HISTORY

1. New section "Contract Provisions" filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. Renumbering and amendment of former section 1896.67 "Adjudicatory and Investigatory Procedures" to section 1896.80 filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
3. Change without regulatory effect renumbering former section 1896.80 "Contract Provisions" to section 1896.110 filed 1-27-94 pursuant to title 1, section 100, California Code of Regulations (Register 94, No. 4).
4. Renumbering and amendment of former section 1896.67 "Adjudicatory and Investigatory Procedures" to section 1896.80 refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction deleting section heading, Note and History for former section 1896.80 "Contract Provisions" and amending History notes (Register 94, No. 14).
6. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 with amendment of text and Note and filed 8-5-94 (Register 94, No. 31).
7. Change without regulatory effect amending first paragraph and Note filed 4-30-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§1896.81. Hearings.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7097, Government Code.

HISTORY

1. New section filed 4-22-91; operative 5-22-91 (Register 91, No. 20).
2. Change without regulatory effect renumbering former section 1896.81 to section 1896.111 and repealer of section 1896.81 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.85. Appeal of Determination - DVBE.

- (a) All decertifications or denials of certification for DVBE status by the Office of Small and Minority Business shall become final unless the DVBE applicant appeals the determination within 30 calendar days of the date of receipt. If the DVBE applicant believes that the determination will result in the wrongful denial of certification by the Office of Small and Minority Business, the DVBE applicant shall mail, hand-deliver, or transmit a facsimile of a signed and dated appeal in writing to the Director of the DGS. Upon receipt of a written appeal from the DVBE applicant which specifies the reasons for good cause, the Director of the DGS may extend the time for the delivery of the appeal in the interest of justice. The Director may accept an untimely appeal upon a showing of good cause.
- (b) When the DGS receives a timely DVBE appeal submitted as prescribed by Section 1896.85(a) of these regulations, a hearing officer appointed by the Director shall resolve the appeal based on written materials or an administrative hearing as determined by the hearing officer. Where the appeal is based upon the decertification of a currently certified DVBE, a hearing officer shall resolve the

appeal by an administrative hearing.

(c) In the event of an administrative hearing, a hearing officer for the Department shall set the date, time and location for the hearing and shall notify all interested parties as determined by the hearing officer, at least five (5) calendar days in advance of the hearing. The hearing officer may, upon reasonable notice to interested parties, change the date of, postpone or continue the hearing at the request of an interested party upon showing of good cause or upon its own motion. The location of the hearing shall be at the discretion of the hearing officer and shall be situated for the convenience of all parties.

(d) If the hearing officer is going to determine the appeal through written submissions, the hearing officer shall notify all interested parties. Each of the interested parties notified by the hearing officer may submit a written argument which supports its position. The written argument shall be submitted by the deadline established by the hearing officer.

(e) In the event the hearing officer determines that an appeal is to be determined through written submissions, the hearing officer shall base his/her decision upon the hearing officer's evaluation that oral or additional testimony would be unnecessary for a full understanding of the issues.

(f) Interested parties must submit an original and two copies of any written material to the DGS together with proof of service of a copy to each interested party.

(g) At any time the DGS finds that an appeal is clearly insufficient on its face, entirely without merit, or outside the jurisdiction of the DGS, the hearing officer may dismiss the appeal forthwith.

(h) The powers and responsibilities of the hearing officer, the period allowed for rendering a decision and the form of notice shall be the same as those established by Title 2, Subchapter 1.5, Sections 1195.4, 1195.5 and 1195.6 respectively, of the California Code of Regulations.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code; and Section 999.5(b), Military and Veterans Code. Reference: Sections 10115.1, 10115.10 and 10295, Public Contract Code; and Sections 999(f) and (g), Military and Veterans Code.

HISTORY

1. New section filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
2. New section refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 with amendment of subsections (a)-(b) and Note filed 8-5-94 (Register 94, No. 31).
4. Editorial correction amending subsection (a) (Register 94, No. 39).

§1896.90. Reporting Participation Goals.

Data reported by the awarding department as required by Section 10115.5 of the Public Contract Code must be consistent with the regulations governing the awards of the contracts. For contracts with a participation goal, the awards must be reported as claimed by the contractor per Section 1896.62(f). For contracts awarded without a

participation goal, the awarding department may report each eligible firm represented in the contract. If it is unknown whether the firm is a certified DVBE, the award(s) must be reported as not qualified.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; Section 10115.3(b), Public Contract Code; and Section 999.5(b), Military and Veterans Code. Reference: Section 10115.5, Public Contract Code; and Section 999.7, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

HISTORY

1. Repealer and new section filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
2. Repealer and new section refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 including repealer and new section and amendment of Note filed 8-5-94 (Register 94, No. 31).
4. Editorial correction amending History 3 (Register 94, No. 40).
5. Change without regulatory effect amending section and Note filed 4-30-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§1896.91. Disabled Veteran Business Enterprise Goals.

NOTE

Authority cited: Sections 14600 and 14615, Government Code. Section 999.5(b), Military and Veterans Code. Reference: Sections 999(e), 999.2 and 999.4, Military and Veterans Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 24).
2. New subsection (c) filed 12-16-91 as an emergency; operative 12-16-91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 4-14-92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-16-91 order transmitted to OAL 4-10-92 and filed 5-22-92 (Register 92, No. 22).
4. Repealer filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
5. Repealer refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 and filed 8-5-94 (Register 94, No. 31).

§1896.92. Disabled Veteran Business Enterprise Participation.

NOTE

Authority cited: Sections 14600 and 14615, Government Code. Section 999.5(b), Military and Veterans Code. Reference: Sections 999.2 and 999.4, Military and Veterans Code. Section 10115.2, Public Contract Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 24).
2. Repealer filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 and filed 8-5-94 (Register 94, No. 31).
5. Editorial correction removing extraneous history note (Register 94, No. 40).

§1896.93. Contract Awards.

NOTE

Authority cited: Sections 14600 and 14615, Government Code. Section 999.5(b), Military and Veterans Code. Reference: Section 999(g), Military and Veterans Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 24).
2. Repealer filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 and filed 8-5-94 (Register 94, No. 31).

§1896.94. Certification.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; and Section 999.5(b), Military and Veterans Code. Reference: Section 999(g), Military and Veterans Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 24).
2. Amendment of subsection (b) and new subsection (c) filed 12-16-91 as an emergency; operative 12-16-91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 4-14-92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-16-91 order transmitted to OAL 4-10-92 and filed 5-22-92 (Register 92, No. 22).
4. Repealer filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
5. Repealer refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 and filed 8-5-94 (Register 94, No. 31).

§1896.95. Forms.

The Office of Small and Minority Business shall use the following form for determining certifiable disabled veteran business enterprises: Small Business and/or Disabled Veteran Business Enterprise Certification Application, STD. 812 (Rev. 8-97).

The portions of the STD. 812 concerning disabled veteran business enterprise pertain to the regulations contained in Sections 1896.60 to 1896.95 and are made a part of this regulation (Section 1896.95, Title 2, California Code of Regulations).

The portions of the STD. 812 that specifically relate to small business certification pertain to the Small Business Procurement and Contract Act.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; Section 999.5(b), Military and Veterans Code; and 10115.3, Public Contract Code. Reference: Section 10115.3, Public Contract Code; and Section 999.5(b), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

HISTORY

1. Repealer and new section filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day. For prior history, see Register 91, No. 24.
2. Repealer and new section refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8).

- 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 with amendment of subsection (a) and filed 8-5-94 (Register 94, No. 31).
4. Amendment of subsection (b) and Note filed 8-5-94 as an emergency; operative 8-5-94 (Register 94, No. 31). A Certificate of Compliance must be transmitted to OAL by 12-3-94 or emergency language will be repealed by operation of law on the following day.
5. Editorial correction amending subsection (a) (Register 94, No. 39).
6. Certificate of Compliance as to 8-5-94 order transmitted to OAL 11-4-94 and filed 12-20-94 (Register 94, No. 51).
7. Change without regulatory effect amending subsection (b) filed 8-1-97 pursuant to section 100, title 1, California Code of Regulations (Register 97, No. 31).
10. Change without regulatory effect repealing subsection (a) and subsection (b) designator and amending Note filed 4-30-98 pursuant to section 100, title 1, California Code of Regulations (Register 98, No. 20).

§1896.96. Adjudicatory and Investigatory Procedures.

NOTE

Authority cited: Sections 14600 and 14615, Government Code. Section 999.5(b), Military and Veterans Code. Reference: Section 999.5(a), Military and Veterans Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 24).
2. Repealer filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
3. Repealer refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 and filed 8-5-94 (Register 94, No. 31).

§1896.97. Monitoring Adherence to the Goals.

NOTE

Authority cited: Sections 14600 and 14615, Government Code; Section 999.5(b), Military and Veterans Code. Reference: Section 999.5(a), Military and Veterans Code.

HISTORY

1. New section filed 4-18-91; operative 4-18-91 (Register 91, No. 24).
2. Amendment filed 12-16-91 as an emergency; operative 12-16-91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 4-14-92 or emergency language will be repealed by operation of law on the following day.
3. Certificate of Compliance as to 12-16-91 order including amendment transmitted to OAL 4-10-92 and filed 5-22-92 (Register 92, No. 22).
4. Repealer filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.
5. Repealer refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 and filed 8-5-94 (Register 94, No. 31).

§1896.98. Appeal of Determination.

NOTE

Authority cited: Section 999.5(b), Military and Veterans Code. Reference: Section 999(g), Military and Veterans Code.

HISTORY

1. New section filed 12-16-91 as an emergency; operative 12-16-91 (Register 92, No. 13). A Certificate of Compliance must be transmitted to OAL 4-14-92 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-16-91 order including amendment of section and designation of subsections (a)-(g) transmitted to OAL 4-10-92 and filed 5-22-92 (Register 92, No. 22).
3. Repealer filed 11-4-93 as an emergency; operative 11-4-93 (Register 93, No. 45). A Certificate of

Compliance must be transmitted to OAL by 3-7-94 or emergency language will be repealed by operation of law on the following day.

4. Repealer refiled 2-23-94 as an emergency; operative 2-23-94 (Register 94, No. 8). A Certificate of Compliance must be transmitted to OAL by 6-23-94 or emergency language will be repealed by operation of law on the following day.

5. Certificate of Compliance as to 2-23-94 order transmitted to OAL 6-23-94 and filed 8-5-94 (Register 94, No. 31).

Subchapter 11. Employment and Economic Incentive Act
Contract Preferences
Article 1.

§1896.100. Definitions.

As used in these rules and regulations:

- (a) "The Act" means the Employment and Economic Incentive Act, commencing with section 7080 of the California Government Code.
- (b) "Hire" means to employ on a full-time basis a person or persons for the purpose of performing a contract in accordance with the provisions of the Act.
- (c) "Contract for goods" means a contract for the purchase of materials, equipment, and supplies, but excluding a contract with a governmental entity.
- (d) "Contract for services" means a contract for the rendering of personal or consultant services, but excluding a contract with a governmental entity. For the purpose of this definition, personal services shall be construed liberally so as to include services requiring little or no discretion, such as but not limited to, blueprinting, photofinishing, laboratory analysis, automobile repairs, office equipment repairs, and reproduction services.
- (e) "False Certification" means a certification which, either by omission or inclusion, the certifying party knows to be false or should have known to be false.
- (f) "California-based company" means a corporation or business, of which the principal office is located in California, and the owners, or officers if the firm is a corporation, are domiciled in California.
- (g) "50 percent of the labor required" means one-half of the total employee hours needed to perform the contract involved. In computing total employee hours with respect to a contract for goods, the employee hours required for manufacturing the goods offered shall be included regardless of whether a bidder is or is not the manufacturer of the goods.
- (h) "Work force" as expressed in the Act means the total number of employees required to directly fulfill the contract requirements as they are set forth in the specifications and/or instructions at the time that bids are solicited by the State. As used herein the term "work force" shall not include labor or services which are merely incidental to the performance of the contract. This exclusion shall include labor and/or services which are considered administrative overhead/support that is not directly allocated to and budgeted for the performance of the state contract for which a hiring preference, authorized by sections(s) 7095(b) or 7095(d) of the Act, is granted.
- (i) "Lowest responsible bid or proposal" means that bid or proposal which pursuant to the criteria contained in the solicitation document would be entitled to contract award without regard to any preference.
- (j) "Program area," in addition to the definition contained in Government Code section 7082(i), shall also mean an enterprise zone established in accordance with the Enterprise Zone Act commencing with section 7070 of the Government Code.

NOTE

Authority cited: Section 7099, Government Code. Reference: Sections 7080, 7082, 7095 and 7097, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.70 to section 1896.100 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).
2. Relocation of subchapter 11 heading and relocation and amendment of article 1 heading filed 8-5-94; operative 8-5-94 (Register 94, No. 31).

§1896.101. Worksite Preference/Contract for Goods.

Whenever a state agency prepares an invitation for bid (IFB) for a contract for the purchase of goods, the cost of which is estimated to be in excess of \$100,000, except a contract where the worksite will be fixed by the terms of the contract, provision shall be made in the IFB for a 5-percent preference for California-based companies who certify under penalty of perjury that no less than 50 percent of the labor required to perform the contract shall be accomplished at a worksite or worksites located in a program area.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.71 to section 1896.101 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.102. Hiring Preference/Contract for Goods.

Where a bidder complies with the provisions of rule 1896.71 the state shall award additional preferences ranging from 1-percent to 4-percent in accordance with Government Code section 7095(b) if the bidder certifies under penalty of perjury it will hire the specified percentage of persons living in a high density unemployment area or enterprise zone qualified employees during the period of contract performance.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.72 to section 1896.102 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.103. Application of Preferences/Contract for Goods.

Preferences provided for by sections 1896.71 and 1896.72 for a contract for goods shall be granted in an amount equal to a corresponding percentage of the lowest responsible bid: provided, however, that for contract award purposes the total of any preferences for which the low responsible bidder qualifies under any provision of law shall be deducted from the total of any preferences to which a higher bidder may be entitled.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.73 to section 1896.103 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.104. Worksite Preference/Contract for Services.

Whenever a state agency prepares an IFB or a request for proposals (RFP) for a contract for services, the cost of which is estimated to be in excess of \$100,000, except an IFB or a RFP where the worksite is fixed by the terms of the contract, provision shall be made in the IFB or the RFP for a 5-percent preference on the price submitted by California-based companies who certify under penalty of perjury that they shall perform the contract at a worksite or worksites located in a program area.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.74 to section 1896.104 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.105. Hiring Preference/Contract for Services.

Where a bidder complies with the provisions of rule 1896.74 the state shall award additional preferences ranging from 1-percent to 4-percent in accordance with Government Code section 7095(d) if the bidder certifies under penalty of perjury it will hire the specified percentages of persons living in high density unemployment areas or enterprise zone qualified employees for contract performance.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.75 to section 1896.105 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.106. Application of Preferences/Contract for Services.

Preferences provided for by sections 1896.74 and 1896.75 for a contract for services shall be granted in an amount equal to a corresponding percentage of the price offered by the lowest responsible bid or the lowest responsible proposal: provided, however, that for contract award purposes the total of any preferences for which the low responsible bidder qualifies under any provision of law shall be deducted from the total of any preferences to which a higher bidder may be entitled.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.76 to section 1896.106 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.107. Low Bid or Proposal.

No preference provided for under the Act shall be granted unless the lowest responsible bid or proposal received is in excess of \$100,000: provided, further, that if a state awarding authority has reserved the right in its Invitation for Bids or Request for Proposals to award multiple contracts on the basis of individual items, no preference provided for under the Act shall be granted for the purpose of a multiple contract award unless the lowest responsible bid or proposal submitted for a particular individual item or group of items that is the basis for contract award, is in excess of \$100,000.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.77 to section 1896.107 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.108. Assistance to Bidders/Department of General Services.

The Department of General Services with the cooperation of the Department of Commerce shall assist prospective bidders in identifying those areas of the state which qualify as program areas under the Act.

NOTE

Authority cited: Section 7099, Government Code. Reference: Sections 7082, 7095 and 14600, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.78 to section 1896.108 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.109. Assistance to Bidders/Department of Commerce.

The Department of Commerce shall assist prospective bidders in identifying persons living in high density unemployment areas or enterprise Zone qualified employees under the Act and provide technical information on state hiring tax credits.

NOTE

Authority cited: Section 7099, Government Code. Reference: Sections 7082, 7086 and 7095, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.79 to section 1896.109 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.110 Contract Provisions.

All IFB's and RFP's and contracts prepared by a state agency relative to contracts for goods or for services which will, or are estimated to exceed \$100,000 in cost, and which are subject to the provisions of the Act, will include either expressly or by reference the following:

(a) Contractor or vendor agrees to comply with the requirements of the

Employment and Economic Incentive Act (Government Code section 7080, et seq.) and attendant rules and regulations. (Title 2, California Code of Regulations, section 1896.70, et seq.).

(b) Contractor or vendor agrees that the state contracting agency, or its delegee, will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor or vendor agrees to provide the state contracting agency or its delegee with any relevant information requested and shall permit the state contracting agency or its delegee access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that maybe relevant to a matter under investigation for the purpose of determining compliance with the Act and attendant rules and regulations. Contractor or vendor further agrees that such records shall be maintained for a period of three (3) years after final payment under the contract.

(c) Contractor or vendor agrees with respect to a certification to hire persons living in a high density unemployment area or enterprise zone qualified employees, to:

(1) Act in good faith for the purpose of maintaining such persons as employees for the duration of contract performance; and

(2) To make a reasonable effort to replace such persons, who for any reason permanently cease to be on the payroll, with other persons living in a high density unemployment area or enterprise zone qualified employees; and

(3) To promptly report to the state contracting agency and thereafter confirm in writing within seven (7) days the names of any such persons who have been terminated or absent from work for more than three (3) consecutive work days and to communicate the reasons for the termination or absence. The contractor or vendor agrees under such circumstances to consult with the state contracting agency and the Department of Commerce with respect to replacement of such persons.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7096, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.80 to section 1896.110 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

§1896.111. Hearings.

The state contracting agency shall be responsible for conducting the hearings authorized by Government Code section 7097 relative to contract awards obtained due to the furnishing of a false certification. The state contracting agency may enter into an agreement for the purpose of having another state agency or office conduct such hearings and to furnish the state contracting agency with a report of findings and a recommendation.

NOTE

Authority cited: Section 7099, Government Code. Reference: Section 7097, Government Code.

HISTORY

1. Change without regulatory effect renumbering former section 1896.81 to section 1896.111 filed 1-27-94 pursuant to section 100, title 1, California Code of Regulations (Register 94, No. 4).

Title 2: Administration
Division 4. Fair Employment and Housing Commission
Chapter 5. Contractor Nondiscrimination and Compliance
Subchapter 1. General Matters

§8101. Office of Compliance Programs.

(a) Creation and Authority. The Department of Fair Employment and Housing (DFEH) is responsible for the administration of policies, the implementation of standards, and the enforcement of the rules and regulations set forth in this chapter. The DFEH has created the Office of Compliance Programs (OCP) to carry out these responsibilities. The OCP will operate under the procedures established in this chapter as well as under other procedures of the Commission as set out in this division.

COMMENT As of the date these regulations were adopted, DFEH headquarters and OCP were located at 1201 I Street, Suite 211, Sacramento, CA 95814, telephone (916) 323-4547.

(b) Administrator. The OCP will operate under the direction of an Administrator of Compliance Programs who shall be appointed by and be responsible to the Director of the Department. The Administrator will have direct responsibility for the appointment of staff and the organization and operation of the OCP consistent with the terms of the Act and the provisions of this chapter.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

Repealer of Chapter 5 (Sections 8317-8323) and new Chapter 5 (Subchapters 1-4, Sections 8101-8502, not consecutive) filed 12-17-82; effective thirtieth day thereafter (Register 82, No. 52). For prior history, see Register 81, No. 3.

§8102. Definitions.

The words defined in this section shall have the meanings set forth below whenever they appear in this chapter, unless:

- (1) the context in which they are used clearly requires a different meaning; or
- (2) a different definition is prescribed for a particular subchapter or provision.

The definitions set forth previously in this division in Sections 7285.2, 7286.5, 7287.2, 7290.7, 7291.2(b), 7292.1, 7293.6, and 7295.1 are also applicable to this chapter.

(a) Bid means any proposal or other request by an employer to a contract awarding agency wherein the employer seeks to be awarded a state contract.

(b) Business means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

(c) Construction means the process of building, altering, repairing, improving, or demolishing any public structure or building, or other public improvements of any kind to any State of California real property. It does not include the routine

operation, routine repair, or routine maintenance of existing structures, buildings, or real property.

(d) Contract or state contract means all types of agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, or construction to which a contract awarding agency is a party. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders. It also includes supplemental agreements or contract modifications with respect to any of the foregoing.

(e) Contract awarding agency or awarding agency means any department, agency, board, commission, division or other unit of the State of California which is authorized to enter into state contracts.

(f) Contractor means any person having a contract with a contract awarding agency or a subcontract for the performance of a contract with such an agency.

(g) Data means recorded information, regardless of form or characteristic.

(h) (Reserved)

(i) Decertification means the decision by OCP that an employer's nondiscrimination program fails to comply with the requirements of the Fair Employment and Housing Act and/or its implementing regulations either because it is poorly designed or because it has not been properly implemented or because of the person's failure to cooperate with OCP it cannot be determined whether the nondiscrimination program meets the requirements of this chapter. Decertification of a program shall continue until OCP certifies that the contractor is in compliance with the requirements of this chapter.

(j) Decision means the decision of the hearing officer regarding the allegations of a show cause notice issued pursuant to Section 8503 of this chapter. A decision shall dismiss, modify, or sustain the allegations of the show cause notice; provide the factual basis for the decision; and include any sanctions to be recommended to the awarding agency together with a statement of the reasons in support thereof.

(k) Employee means an individual under the direction and control of a contractor under any appointment or contract of hire or apprenticeship, express or implied, oral or written.

(l) (Reserved)

(m) May denotes the permissive.

(n) Minority refers to an individual who is ethnically or racially classifiable in one of four major groups: Black, Hispanic, Asian or Pacific Islander; or American Indian or Alaskan Native.

(1) Black includes persons having their primary origins in any of the black racial groups of Africa, but not of Hispanic origin;

(2) Hispanic includes persons of primary culture or origin in Mexico, Puerto Rico, Cuba, Central or South America, or other Spanish derived culture or origin regardless of race;

(3) Asian/Pacific Islander includes persons having primary origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa; and

(4) American Indian/Alaskan Native includes persons having primary origins in

any of the original peoples of North America, and who maintain culture identification through tribal affiliation or community recognition.

(o) Nondiscrimination Clause means the clause to be included in each state contract or subcontract pursuant to these regulations.

(p) Person means any business, individual, union, committee, club, or other organization or group of individuals.

(q) Prime contractor means any individual or organization who directly contracts with the State of California.

(r) Service and supply contract includes any contract except a construction contract.

(s) Services means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include collective bargaining agreements or arrangements between parties which constitute that of employer and employee.

(t) Shall denotes the imperative.

(u) Subcontract means any agreement or arrangement executed by a contractor with a third party in which the latter agrees to provide all or specified part of the supplies, services or construction required in the original state contract. This does not include arrangements between parties which constitute that of employer and employee.

(v) Subcontractor means any individual or organization holding a subcontract for the performance of all or any part of a state contract.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

Amendment filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8102.5. Nondiscrimination Agreement.

State contracts exempt from the requirements of Section 8107 shall include, as an express or implied term, the term set out in either Section 8107 Clause (a) or Clause (b). Breach of this term of contract may constitute a material breach of the contract, and may result in the imposition of sanctions by the awarding agency and may result in decertification from future opportunities to contract with the state.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

1. New section filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).
2. Editorial correction filed 7-5-83; and correction of HISTORY printing error (Register 83, No. 28).

§8103. Requirement of Nondiscrimination Program.

All employers who are, or wish to become, contractors with the state must develop and implement a nondiscrimination program as defined in Section 8104 of this chapter unless specifically exempted pursuant to Section 8115 of this chapter.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§8104. Nondiscrimination Program.

(a) Definition and Purpose. A nondiscrimination program (hereinafter referred to as "the Program") is a set of specific and result-oriented procedures to which a contractor or subcontractor commits itself for the purpose of insuring equal employment opportunity for all employees or applicants for employment. It may include an affirmative action component which establishes goals and timetables to remedy any underutilization of minorities and/or women which is identified.

The Program shall contain the following elements:

- (1) Development or reaffirmation of the contractor's equal employment opportunity policy in all personnel actions.
- (2) Formal internal and external dissemination of the contractor's policy.
- (3) Establishment of responsibilities for implementation of the contractor's program.
- (4) Annual identification of any existing practices which have resulted in disproportionately inhibiting the employment, promotion or retention of those protected by the Act.

(A) Analysis of Employment Selection Procedures. The Program shall include an identification and analysis of contractor promotional and entry-level selection procedures and shall identify any such procedures which have resulted in disproportionately inhibiting the employment, promotion or retention of minorities or women. The retention of such practices so identified can only be justified according to the principles of "business necessity" upon a demonstration that no reasonable alternatives to such practices exist. The prospective contractor shall eliminate any practices which cannot be so justified.

(B) Workforce Analysis. The Program will contain a workforce analysis which shall consist of a listing of each job title which appears in applicable collective bargaining agreements or payroll records ranked from the lowest paid to the highest paid within each department or other similar organizational unit, including departmental or unit supervisory personnel. For each job title, the total number of incumbents, and the total number of male and female incumbents, and the total number of male and female incumbents in each of the following groups must be given: Blacks, Hispanics, Asian/Pacific Islanders, and American Indian/Native Alaskans. The wage rate or salary range for each job title must be given. All job titles, including all managerial job titles, must be listed. If there are separate work

units or lines of progression within a department, a separate list must be provided for each such work unit, or line, including unit supervisors. For lines of progression there must be indicated the order of jobs in the line through which an employee could move to the top of the line. Where there are no formal progression lines or usual promotional sequences, job titles should be listed by department, job families, or disciplines, in order of wage rates or salary ranges. (C) Utilization Analysis. Employers with 250 or more employees must perform a utilization analysis which shall consist of an analysis of the major job groups at the facility in order to determine whether women and minorities are being underutilized when compared to their availability. A job group for this purpose shall consist of one or more jobs which have similar content, wage rates and opportunities. Underutilization is defined as having a statistically significant lower utilization of minorities or women in a particular job group than their availability. Availability is defined as the availability in the labor force. The labor force for this purpose may vary depending upon the type of job in question, and the contractor's past practice, and could encompass the contractor's existing employees, the area immediately surrounding the facility where the vacancy exists for low-skill jobs or it could encompass the entire nation for highly-skilled managerial positions. The employer shall conduct a separate utilization analysis for each minority group and women.

(5) Development and execution of action oriented programs designed to correct problems and attain equal employment opportunities for all applicants and employees.

(6) Design and implementation of internal audit and reporting systems to measure the effectiveness of the total program.

(b) Employers who have identified a practice or practices which have an adverse impact on one or more groups protected by the Act and which may unlawfully discriminate against members of such groups may wish to include an affirmative action component in their nondiscrimination programs to minimize liability for discrimination, and correct past injustices; such affirmative action may be required of employers who are found to have discriminated in violation of the Act. Such a voluntary affirmative action component might contain, but need not be limited to, the following:

(1) Active support of local and national community action programs and community service programs designed to improve the employment opportunities of minorities and women;

(2) Providing training opportunities to minorities and women within the employer's organization which will qualify them for promotion when openings become available;

(3) Encouraging qualified women and minorities within the employer's organization to seek and accept transfers and promotions which increase their future opportunities;

(4) Actively recruit qualified minorities and women, even those not currently seeking such employment;

(5) Establishing and/or supporting training programs for entry level positions; and

(6) Establishing goals and objectives by organizational units and job groups, including timetables for completion. Establishment and implementation of a nondiscrimination program which contains an effective affirmative action

component will create a rebuttable presumption that a contractor is in compliance with the requirements of Government Code, Section 12990 and its implementing regulations.

(c) An employer with multiple facilities may establish a single nondiscrimination program for its organization, but must perform separate analyses pursuant to subsections (a)(4)(A), (B), and (C) above for each establishment.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

Amendment of subsection (a)(4)(A) filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8106. Prima Facie Compliance.

Compliance with a nondiscrimination or affirmative action program subject to review and approval by a federal compliance agency shall constitute prima facie evidence that a contractor has complied with the requirements of Sections 8103 and 8104, unless the federal agency has found that the program is not in compliance with federal law, in which case compliance with a current federal commitment letter or conciliation agreement shall constitute prima facie evidence that a contractor has complied with the requirements of Sections 8103 and 8104. Such prima facie evidence can be rebutted by a preponderance of the evidence to the contrary.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§8107. Nondiscrimination Clause.

Each state contract shall contain a Nondiscrimination Clause unless specifically exempted pursuant to Section 8115. The governmental body awarding the contract may use either clause (a) or clause (b) below. Clause (a) will satisfy the requirements of Section 12990 of the Government Code only; clause (b) contains language which will satisfy the requirements of both the Fair Employment and Housing Act and Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (adopted pursuant to Government Code, Sections 11135-11139.5). Standardized state form OCP-1, containing clause (a), and OCP-2, containing clause (b), will be available through the OCP. These forms may be incorporated into a contract by reference and will fulfill the requirement of this section. The contracting parties may, in lieu of incorporating form OCP-1 or OCP-2, include the required clause in the written contract directly.

Clause (a)

1. During the performance of this contract, contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap,

medical condition, marital status, age (over 40) or sex. Contractors and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Contractors and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Administrative Code are incorporated into this contract by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

2. This Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

Clause (b)

1. During the performance of this contract, the recipient, contractor and its subcontractors shall not deny the contract's benefits to any person on the basis of religion, color, ethnic group identification, sex, age, physical or mental disability, nor shall they discriminate unlawfully against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental disability, medical condition, marital status, age (over 40) or sex. Contractor shall insure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

2. Contractor shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code, Section 12900 et seq.), the regulations promulgated thereunder (Cal. Admin. Code, Tit. 2, Sections 7285.0 et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (Gov. Code, Sections 11135-11139.5), and the regulations or standards adopted by the awarding state agency to implement such article.

3. Contractor or recipient shall permit access by representatives of the Department of Fair Employment and Housing and the awarding state agency upon reasonable notice at any time during the normal business hours, but in no case less than 24 hours notice, to such of its books, records, accounts, other sources of information and its facilities as said Department or Agency shall require to ascertain compliance with this clause.

4. Recipient, contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

5. The contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the contract.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

Amendment filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8108. Subcontracts.

The contractor shall include the nondiscrimination clause in its contract in all subcontracts to perform work under the contract, either directly or by incorporation by reference. Any such incorporation by reference shall be specific and prominent.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§8109. Enforcement of Clause.

The "Nondiscrimination Clause" in state contracts and subcontracts shall be fully and effectively enforced. Any breach of its terms may constitute a material breach of the contract and may result in the imposition of sanctions against the contractor, including but not limited to cancellation, termination, or suspension of the contract in whole or in part, by the contract awarding agency or decertification from future opportunities to contract with the State of California by DFEH.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

New section filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8112. Contract Awarding Agency, Unresponsive Bids.

(a) A contract awarding agency shall refuse to accept a bid or proposal on a state contract subject to this chapter when the bid is unaccompanied by a "Statement of Compliance" pursuant to Section 8113, and shall declare any such bid or proposal unresponsive.

(b) A contract awarding agency shall declare unresponsive any bid or proposal on a state contract that is submitted by a contractor on OCP's list of decertified contractors.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

New subsection (b) filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8113. Statement of Compliance.

(a) As a part of its bid an eligible prospective contractor which bids on a state contract must submit a statement under penalty of perjury to the awarding agency that it has complied with the requirement of Section 8103 of this chapter.

(b) No state contract, unless otherwise exempted pursuant to Section 8115, shall be awarded by any contract awarding agency unless the prospective contractor has filed with the agency as a part of its bid a statement, made under penalty of

perjury, that the prospective contractor has complied with the requirements of Section 8103 of this chapter.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§8114. Subcontracting Prohibited with Ineligible Entities.

(a) OCP shall establish and maintain a list of decertified contractors, which shall be updated monthly and published in the first California Notice Register published each month.

(b) No contractor with the State of California shall, during the performance of any contract with the State, enter into any subcontract with any person listed on OCP's list of decertified contractors during the month in which the bid is submitted.

(c) Subcontracting with a decertified contractor in violation of the provisions of this section may constitute a material breach of the contract and may result in the imposition of sanctions against the contractor, including but not limited to cancellation, termination, or suspension of the contract, in whole or in part by the awarding agency, or decertification by DFEH. Specific knowledge of the unlawfulness of the subcontract is not required to establish a breach, but will be considered by OCP and the contract awarding agency in their determination of the appropriate sanctions.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

New section filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8115. Exemptions.

(a) Licensed rehabilitation workshops which are contractors of state contracting agencies are exempted from the requirements of this chapter.

(b) Contracts of less than \$5,000 are automatically exempt from the requirements of Section 8107; contractors holding only such contracts are automatically exempt from the requirements of Section 8103, but are subject to Section 8102.5.

(c) A contractor with fewer than fifty (50) employees in its entire workforce may receive an automatic exemption from the Program requirements of Section 8104, subdivisions (a)(4)(B)-(C) pertaining to workforce and utilization analyses by filing a current "California Employer Information Report" annually with OCP. The OCP may remove any exemption granted under this subsection, in connection with any detailed review or any investigation instituted pursuant to Section 8401 or 8402, or whenever the contractor is found to be in substantial noncompliance with the requirements of this chapter.

(d) Contracts and subcontracts which are awarded pursuant to a declaration of public emergency, a declaration or determination of emergency pursuant to Government Code, Section 14809 or Government Code, Section 14272,

subdivision (a), (b), or (c), or a declared threat to the health, welfare or safety of the public are fully exempted from the requirements of Section 8107, and contractors holding only such contracts are exempted from the requirements of Section 8103, but remain subject to Section 8102.5.

(e) A construction contractor with fewer than 50 permanent employees may obtain an exemption from the requirements of Section 8104, subdivision (a)(4)(B)-(C) pertaining to workforce and utilization analyses by filing a CEIR annually with OCP. The OCP may remove any exemption granted under this subsection, in connection with any detailed review or any investigation instituted pursuant to Section 8401 or 8402, or whenever the contractor is found to be in substantial noncompliance with the requirements of this chapter.

(f) Exemptions of subsections (a) and (d) of this section shall be granted only upon application to the state contract awarding agency prior to the date the contract is awarded. The contract awarding agency shall, prior to the grant of any exemption under this section, require proof of satisfaction of the exemption conditions of this section. The OCP may issue opinion letters and guidelines from time to time to assist contract awarding agencies in making determinations under this section.

NOTE

Authority cited: Sections 12935(a) and 12990(d) Government Code. Reference: Section 12990, Government Code.

HISTORY

1. Amendment filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8116. Advertisements for New Employees.

In all written advertisements or recruitment efforts for new employees during the performance of a regulated contract, a contractor is required to prominently identify itself with the phrase "State Equal Opportunity Employer" or similar wording.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§8117. Recruitment.

In the event that any labor organization from which employees are normally recruited and/or with which the contractor has a collective bargaining agreement is unable or unwilling to refer minorities or women the contractor or subcontractor shall take the following steps and, for a period of two years, keep a record thereof:

(a) Notify the California Employment Development Department and at least two minority or female referral organizations of the personnel needs and request appropriate referrals, and

(b) Notify any minority or female persons who have personally listed themselves with the contractor or subcontractor as seeking employment of any existing vacancies for which they may qualify;

- (c) Notify minority, women's and community organizations that employment opportunities are available.
- (d) Immediately notify OCP of the existence of the historical and present relationship between the contractor and labor organizations and detail the efforts of the contractor to secure adequate referrals through the labor organizations. Neither the provisions of any collective bargaining agreement, nor the failure by a union with which the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under Government Code, Section 12990, or the regulations in this chapter.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code

§8117.5. Notice of Contract.

Contract awarding agencies shall give written notice to the Administrator within 10 working days of award of all contracts over \$5,000. The notice shall include name, address and telephone number of the contractor; federal employer identification number; state contract identification number; date of contract award; contract amount; project location; name of contractor's agent who signed the contract; name of contract awarding agency and contract awarding officer; and brief description of the purpose or subject of the contract.

NOTE

Authority cited: Sections 12935(a) and 12990(d) Government Code. Reference: Section 12990, Government Code.

§8118. Contract Forms.

The State Department of General Services will have printed copies of the forms referred to in this chapter and shall make them available upon request.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§8119. Access to Records and Employment Site.

- (a) Each contractor shall provide OCP with any relevant information requested and shall permit OCP access to its premises, upon reasonable notice, during normal business hours for the purpose of conducting on-site compliance reviews, employee interviews, and inspecting and copying such books, records, accounts and other material as may be relevant to a matter under investigation for the purpose of determining and enforcing compliance with this chapter.
- (b) All information provided to DFEH in response to a request from OCP which contains or might reveal a trade secret referred to in Section 1905 of Title 18 of the United States Code, or other information that is confidential pursuant to Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, shall be considered confidential, except that such information

may be disclosed to other officers or employees of DFEH and may be introduced as evidence in any hearing conducted pursuant to Section 8503 of this Chapter or Section 12967 of the Government Code. The hearing officer or the director shall issue such orders as may be appropriate to protect the confidentiality of such information.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§8120. Complaints of Discrimination or Noncompliance.

(a) Any interested person may lodge a written complaint of noncompliance with either DFEH or the contract awarding agency. The complaint shall state the name and address of the contractor, and shall set forth a description of the alleged noncompliance. Complaints lodged with the awarding agency shall be immediately referred to the Administrator of OCP. No complaint may be lodged after the expiration of one year from the date upon which the alleged noncompliance occurred.

OCP shall cause any written complaint lodged under the provisions of this section on which it intends to take action to be served, either personally or by ordinary first class mail, upon the respondent contractor and the awarding agency within 45 days. At the discretion of the Administrator, the complaint may not contain the name of the complaining party.

(b) OCP shall notify the contract awarding agency of any action pursuant to Section 8501 instituted against a contractor of the agency, and permit the agency to become a party to the action, except that the agency shall be fully responsive to any request for information made by OCP in connection with the action

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code

Subchapter 2. Regulations Applicable to Construction Contracts

§8200. Scope.

This subchapter applies to all nonexempt businesses which seek or hold any state construction contract or subcontract. The regulations in this subchapter are applicable to all of a construction contractor's employees who are engaged in on-site construction including those employees who work on a construction site where no state work is being performed.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§8201. Notice of Requirements.

The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all nonexempt state construction contracts and subcontracts, except that newspaper or trade publication advertisements need only state that the contract is subject to state contractor nondiscrimination and compliance requirements pursuant to Government Code, Section 12990:

NOTICE OF REQUIREMENT FOR NONDISCRIMINATION PROGRAM (GOV. CODE, SECTION 12990)

Your attention is called to the "Nondiscrimination Clause" set forth or referred to herein, which is applicable to all nonexempt state construction contracts and subcontracts and to the "Standard California Nondiscrimination Construction Contract Specifications" set forth herein. The Specifications are applicable to all nonexempt state construction contracts and subcontracts of \$5,000 or more.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§8202. Application to Permanent and Temporary Workforce.

A construction contractor's nondiscrimination program established pursuant to Sections 8103 and 8104 of this chapter must ensure nondiscrimination within both its permanent workforce and its temporary on-site workforce. The Section 8104 requirements of workforce and utilization analyses, however, must be prepared only for permanent employees.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§8202.5. Transfers Prohibited.

It is a violation of the contract, of Government Code Section 12990 and the regulations in Chapter 5 of Division 4 of Title 2 of the California Administrative Code to transfer women and minority employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the contractor's nondiscrimination obligations.

NOTE

Authority cited: Sections 12935(a) and 12990(d) Government Code. Reference: Section 12990, Government Code.

HISTORY

1. New section filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8203. Standard California Nondiscrimination Construction Contract Specifications. (Gov. Code, Section 12990.)

In addition to the nondiscrimination clause set forth in Section 8107, all non-exempt state construction contracts and subcontracts of \$5,000 or more shall include the specifications set forth in this section.

**STANDARD CALIFORNIA NONDISCRIMINATION
CONSTRUCTION CONTRACT SPECIFICATIONS (GOV. CODE, SECTION
12990)**

These specifications are applicable to all state contractors and subcontractors having a construction contract or subcontract of \$5,000 or more.

1. As used in the specifications:

a. "Administrator" means Administrator, Office of Compliance Programs, California Department of Fair Employment and Housing, or any person to whom the Administrator delegates authority;

b. "Minority" includes:

(i) Black (all persons having primary origins in any of the black racial groups of Africa, but not of Hispanic origin);

(ii) Hispanic (all persons of primary culture or origin in Mexico, Puerto Rico, Cuba, Central or South America or other Spanish derived culture or origin regardless of race);

(iii) Asian/Pacific Islander (all persons having primary origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent or the Pacific Islands); and

(iv) American Indian/Alaskan Native (all persons having primary origins in any of the original peoples of North America and who maintain culture identification through tribal affiliation or community recognition).

2. Whenever the contractor or any subcontractor subcontracts a portion of the work, it shall physically include in each subcontract of \$5,000 or more the nondiscrimination clause in this contract directly or through incorporation by reference. Any subcontract for work involving a construction trade shall also include the Standard California Construction Contract Specifications, either directly or through incorporation by reference.

3. The contractor shall implement the specific nondiscrimination standards provided in paragraphs 6(a) through (e) of these specifications.

4. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the contractor's obligations under these specifications, Government Code, Section 12990, or the regulations promulgated pursuant thereto.

5. In order for the nonworking training hours of apprentices and trainees to be counted, such apprentices and trainees must be employed by the contractor during the training period, and the contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant

to training programs approved by the U.S. Department of Labor or the California Department of Industrial Relations.

6. The contractor shall take specific actions to implement its nondiscrimination program. The evaluation of the contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The contractor must be able to demonstrate fully its efforts under Steps a. through e. below:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and at all facilities at which the contractor's employees are assigned to work. The contractor, where possible, will assign two or more women to each construction project. The contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the contractor's obligations to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Provide written notification within seven days to the director of DFEH when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

c. Disseminate the Contractor's equal employment opportunity policy by providing notice of the policy to unions and training, recruitment and outreach programs and requesting their cooperation in assisting the Contractor to meet its obligations; and by posting the company policy on bulletin boards accessible to all employees at each location where construction work is performed.

d. Ensure all personnel making management and employment decisions regarding hiring, assignment, layoff, termination, conditions of work, training, rates of pay or other employment decisions, including all supervisory personnel, superintendents, general foremen, on-site foremen, etc., are aware of the Contractor's equal employment opportunity policy and obligations, and discharge their responsibilities accordingly.

e. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the equal employment opportunity policy and the Contractor's obligations under these specifications are being carried out.

7. Contractors are encouraged to participate in voluntary associations which assist in fulfilling their equal employment opportunity obligations. The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under these specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's.

8. The Contractor is required to provide equal employment opportunity for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Fair Employment and Housing Act (Gov. Code, Section 12990 et seq.) if a particular group is employed in a substantially disparate manner.

9. Establishment and implementation of a bona fide affirmative action plan pursuant to Section 8104 (b) of this Chapter shall create a rebuttable presumption that a contractor is in compliance with the requirements of Section 12990 of the Government Code and its implementing regulations.

10. The Contractor shall not use the nondiscrimination standards to discriminate against any person because of race, color, religion, sex, national origin, ancestry, physical handicap, medical condition, marital status or age over 40.

11. The Contractor shall not enter into any subcontract with any person or firm decertified from state contracts pursuant to Government Code Section 12990.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and the nondiscrimination clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Government Code Section 12990 and its implementing regulations by the awarding agency. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Government Code Section 12990.

13. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company equal employment opportunity policy is being carried out, to submit reports relating to the provisions hereof as may be required by OCP and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status, (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in any easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

1. Amendment filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8204. Reporting Requirement.

Contractors holding construction contracts of \$50,000 or more must submit quarterly utilization reports to OCP on forms to be provided by OCP. In such reports the contractor must provide identifying information and report the number and percentage of journey worker, apprentice, and trainee hours worked in each job classification by sex and ethnic group, together with the total number of employees and total number of minority employees in each classification by sex. The quarterly utilization reports must cover each calendar quarter and must be

received by OCP no later than the 15th day of the month following the end of the quarter (April 15, July 15, October 15, and January 15). Contractors who are required to submit utilization reports to the federal government may submit a copy of the federal report to the OCP at the same time they submit the report to the federal government in lieu of the state quarterly utilization report.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

1. New section filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8205. Effect on Other Regulations.

The Regulations in this subchapter are in addition to the regulations contained in this division which apply to contractors and subcontractors generally. See particularly, California Administrative Code, Title 2, Division 4, Chapter 1 through 5, Sections 7285.0 through 7285.7, 7286.3 through 7296.4, 7400 through 7469.1, 8100 through 8120, and 8400 through 8407.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

1. New section filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

Subchapter 3. Regulations Applicable to Service and Supply Contracts

Article 1. Small Contracts

§8300. Scope.

This subchapter applies to all contractors which seek or hold any nonexempt state service and supply contract or subcontract.

NOTE

Authority cited: Sections 12935(a) and 12990(d) Government Code. Reference: Section 12990, Government Code.

HISTORY

1. New section filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8301. Definition of Small Contract.

All state contracts with a dollar value of twenty-five thousand dollars (\$25,000) or less are for purposes of this subchapter defined as "small" contracts.

NOTE

Authority cited: Sections 12935(a) and 12990(d) Government Code. Reference: Section 12990, Government Code.

§8302. Post Award Filing.

Contractors awarded small contracts need not file any information with OCP after execution of the contract, but must provide OCP access to records required under Section 8303 upon request.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference, Section 12990, Government Code.

§8303. Post Award Compliance.

(a) Each contractor of a "small" contract shall compile and shall maintain for inspection for two years after award:

(1) Information regarding the contractor: Federal Employer Identification number; state contract identification number; legal name of the business organization, parent corporation or other outside ownership interest, if applicable, business telephone number, street address, city, state and zip code; mailing address, if different; total number of employees, identified by sex, race and national origin; name, business phone and mailing address of contractor's EEO/AA officer, if there is one, and name of the person responsible for the maintenance of information required pursuant to subsection (b) below.

(2) Information regarding the contract: Dollar value of contract; time for performance of the contract; date of contract award; name of contract awarding agency, and contract awarding officer; brief description of the purpose or subject of the contract.

(3) A copy, if one was required to be prepared of the prime contractor's current California Employer Identification Report (CEIR), or equivalent federal form (See Section 7287.0(a) of this division regarding the preparation of CEIR's.)

(b) Failure to comply with the requirements of this section may result in a determination that the contractor has materially breached the state contract and the decertification of the contractor from future state contracts.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Sections 12990, Government Code.

HISTORY

1. New subsection (b) filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8304. Verification.

A contract awarding agency shall, upon request by OCP, verify information provided to OCP by an agency contractor performing a small contract. Such requests for verification shall be limited to that information required by OCP on any standardized state forms or other form where such information is specifically required by these regulations, and such information is also contained in the awarding agency's files.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

Article 2. Regulated Contracts

§8310. Regulated Contracts, Dollar Value.

All State contracts with a dollar value of more than twenty-five thousand dollars (\$25,000) are for the purposes of this subchapter classified as “regulated” contracts.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

§8311. Post Award Informational Filing.

(a) The prime contractor of a “regulated” contract shall file with OCP within twenty-eight (28) days from the date of execution of a “regulated” contract or the effective date of these regulations, whichever occurs later:

(1) Information Regarding the Contractor: Federal Employer Identification Number; state contract identification number; legal name of the business organization; business telephone number, street address, city, state and zip code; mailing address, if different; name, business phone and mailing address of contractor's EEO/AA Officer.

(2) Information Regarding the Contract: Dollar value of contract; date of contract award; name of contract awarding agency, and contract awarding officer; brief description of the purpose or subject of the contract.

(3) (Reserved)

(4) A copy of the prime contractor's current California Employer Identification Report (CEIR) or equivalent federal form (EEO-1). If the prime contractor is not otherwise required to prepare a CEIR, it must do so in order to comply with the requirements of this section. (See Section 7287.0 (a) of this division regarding the preparation of CEIR's.)

This information shall be updated annually thereafter, so long as the contractor remains subject to these regulations.

(b) Contractors awarded more than one state contract in one year may file only the information required in subdivision (a)(2) and (a)(4) above for the second and all subsequent contracts awarded during the year.

(c) The OCP and the contract awarding agency shall make forms available for providing the information required under this section.

(d) Failure to comply with the requirements of this section may result in a determination that the contractor has materially breached the state contract and the decertification of the contractor from future state contracts.

NOTE

Authority cited: Sections 12935(a), and 12990(d), Government Code. Reference: Section 12990, Government Code.

HISTORY

1. New subsection (d) filed 6-2-83; effective thirtieth day thereafter (Register 83, No. 23).

§8312. Designating EEO/Affirmative Action Officer.

All contractors of regulated contracts shall designate an individual responsible for the implementation of the contractor's Nondiscrimination Program.

NOTE

Authority cited: Sections 12935(a) and 12990(d), Government Code. Reference: Section 12990, Government Code.

FEDERAL CODES

TITLE 8 U.S.C. CHAPTER 14. RESTRICTING WELFARE AND PUBLIC BENEFITS FOR ALIENS SUBCHAPTER II. ELIGIBILITY FOR STATE AND LOCAL PUBLIC BENEFITS PROGRAMS

Sec. 1621. - Aliens who are not qualified aliens or nonimmigrants ineligible for State and local public benefits

(a) In general

Notwithstanding any other provision of law and except as provided in subsections (b) and (d) of this section, an alien who is not -

(1)

a qualified alien (as defined in section 1641 of this title),

(2)

a nonimmigrant under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), or

(3)

an alien who is paroled into the United States under section 212(d)(5) of such Act (8 U.S.C. 1182(d)(5)) for less than one year,

is not eligible for any State or local public benefit (as defined in subsection (c) of this section).

(b) Exceptions

Subsection (a) of this section shall not apply with respect to the following State or local public benefits:

(1)

Assistance for health care items and services that are necessary for the treatment of an emergency medical condition (as defined in section 1396b(v)(3) of title 42) of the alien involved and are not related to an organ transplant procedure.

(2)

Short-term, non-cash, in-kind emergency disaster relief.

(3)

Public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease.

(4)

Programs, services, or assistance (such as soup kitchens, crisis counseling and intervention, and short-term shelter) specified by the Attorney General, in the Attorney General's sole and unreviewable discretion after consultation with appropriate Federal agencies and departments, which

(A)

deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B)

do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C)

are necessary for the protection of life or safety.

(c) "State or local public benefit" defined

(1)

Except as provided in paragraphs (2) and (3), for purposes of this subchapter the term "State or local public benefit" means -

(A)

any grant, contract, loan, professional license, or commercial license provided by an agency of a State or local government or by appropriated funds of a State or local government; and

(B)

any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of a State or local government or by appropriated funds of a State or local government.

(2)

Such term shall not apply -

(A)

to any contract, professional license, or commercial license for a nonimmigrant whose visa for entry is related to such employment in the United States, or to a citizen of a freely associated state, if section 141 of the applicable compact of free association approved in Public Law 99-239 or 99-658 (or a successor provision) is in effect;

(B)

with respect to benefits for an alien who as a work authorized nonimmigrant or as an alien lawfully admitted for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) qualified for such benefits and for whom the United States under reciprocal treaty agreements is required to pay benefits, as determined by the Secretary of State, after consultation with the Attorney General; or

(C)

to the issuance of a professional license to, or the renewal of a professional license by, a foreign national not physically present in the United States.

(3)

Such term does not include any Federal public benefit under section 1611(c) of this title.

(d) State authority to provide for eligibility of illegal aliens for State and local public benefits

A State may provide that an alien who is not lawfully present in the United States is eligible for any State or local public benefit for which such alien would otherwise be ineligible under subsection (a) of this section only through the enactment of a State law after August 22, 1996, which affirmatively provides for such eligibility

Sec. 1622. - State authority to limit eligibility of qualified aliens for State public benefits

(a) In general

Notwithstanding any other provision of law and except as provided in subsection (b) of this section, a State is authorized to determine the eligibility for any State public benefits of an alien who is a qualified alien (as defined in section 1641 of this title), a nonimmigrant under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), or an alien who is paroled into the United States under section 212(d)(5) of such Act (8 U.S.C. 1182(d)(5)) for less than one year.

(b) Exceptions

Qualified aliens under this subsection shall be eligible for any State public benefits.

(1) Time-limited exception for refugees and asylees

(A)

An alien who is admitted to the United States as a refugee under section 207 of the Immigration and Nationality Act (8 U.S.C. 1157) until 5 years after the date of an alien's entry into the United States.

(B)

An alien who is granted asylum under section 208 of such Act (8 U.S.C. 1158) until 5 years after the date of such grant of asylum.

(C)

An alien whose deportation is being withheld under section 243(h) of such Act (8 U.S.C. 1253) (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of Public Law 104-208) until 5 years after such withholding.

(D)

An alien who is a Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980 until 5 years after the alien is granted such status.

(E)

An alien admitted to the United States as an Amerasian immigrant

as described in section 1612(a)(2)(A)(i)(V) (FOOTNOTE 1) of this title.

(2) Certain permanent resident aliens

An alien who -

(A)

is lawfully admitted to the United States for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); and

(B)

(i)

has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act (42 U.S.C. 401 et seq.) or can be credited with such qualifying quarters as provided under section 1645 of this title, and

(ii)

in the case of any such qualifying quarter creditable for any period beginning after December 31, 1996, did not receive any Federal means-tested public benefit (as provided under section 1613 of this title) during any such period.

(3) Veteran and active duty exception

An alien who is lawfully residing in any State and is -

(A)

a veteran (as defined in section 101, 1101, or 1301, or as described in section 107 of title 38) with a discharge characterized as an honorable discharge and not on account of alienage and who fulfills the minimum active-duty service requirements of section 5303A(d) of title 38,

(B)

on active duty (other than active duty for training) in the Armed Forces of the United States, or

(C)

the spouse or unmarried dependent child of an individual described in subparagraph (A) or (B) or the unremarried surviving spouse of an individual described in clause (i) or (ii) ^[2] who is deceased

if the marriage fulfills the requirements of section 1304 of title 38. (A)
(B)".

(4) Transition for those currently receiving benefits

An alien who on August 22, 1996, is lawfully residing in any State and is receiving benefits on August 22, 1996, shall continue to be eligible to receive such benefits until January 1, 1997

[1] See References in Text note below.

[2] So in original. Probably should be "subparagraph

Sec. 1625. - Authorization for verification of eligibility for State and local public benefits

A State or political subdivision of a State is authorized to require an applicant for State and local public benefits (as defined in section 1621(c) of this title) to provide proof of eligibility

Sec. 1641. - Definitions

(a) In general

Except as otherwise provided in this chapter, the terms used in this chapter have the same meaning given such terms in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

(b) Qualified alien

For purposes of this chapter, the term "qualified alien" means an alien who, at the time the alien applies for, receives, or attempts to receive a Federal public benefit, is -

(1)

an alien who is lawfully admitted for permanent residence under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.),

(2)

an alien who is granted asylum under section 208 of such Act (8 U.S.C. 1158),

(3)

a refugee who is admitted to the United States under section 207 of such Act (8 U.S.C. 1157),

(4)

an alien who is paroled into the United States under section 212(d)(5) of such Act (8 U.S.C. 1182(d)(5)) for a period of at least 1 year,

(5)

an alien whose deportation is being withheld under section 243(h) of such Act (8 U.S.C. 1253) (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208) or section 241(b)(3) of such Act (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of Public Law 104-208),

(6)

an alien who is granted conditional entry pursuant to section 203(a)(7) of such Act (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980; ⁽¹¹⁾ or

(7)

an alien who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980).

(c) Treatment of certain battered aliens as qualified aliens

For purposes of this chapter, the term "qualified alien" includes -

(1)

an alien who -

(A)

has been battered or subjected to extreme cruelty in the United States by a spouse or a parent, or by a member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented to, or acquiesced in, such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B)

has been approved or has a petition pending which sets forth a prima facie case for -

(i)

status as a spouse or a child of a United States citizen pursuant to clause (ii), (iii), or (iv) of section 204(a)(1)(A) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(A)(ii), (iii), (iv)),

(ii)

classification pursuant to clause (ii) or (iii) of section 204(a)(1)(B) of the Act (8 U.S.C. 1154(a)(1)(B)(ii), (iii)),

(iii)

suspension of deportation under section 244(a)(3) of the Immigration and Nationality Act (8 U.S.C. 1254(a)(3)) (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).^[2]

(iv)

status as a spouse or child of a United States citizen pursuant to clause (i) of section 204(a)(1)(A) of such Act (8 U.S.C. 1154(a)(1)(A)(i)), or classification pursuant to clause (i) of section 204(a)(1)(B) of such Act (8 U.S.C. 1154(a)(1)(B)(i));^[3] ", or".

(v)

cancellation of removal pursuant to section 240A(b)(2) of such Act (8 U.S.C. 1229b(b)(2));

(2)

an alien -

(A)

whose child has been battered or subjected to extreme cruelty in the United States by a spouse or a parent of the alien (without the active participation of the alien in the battery or cruelty), or by a

member of the spouse or parent's family residing in the same household as the alien and the spouse or parent consented or acquiesced to such battery or cruelty, and the alien did not actively participate in such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B)

who meets the requirement of subparagraph (B) of paragraph (1);
or

(3)

an alien child who -

(A)

resides in the same household as a parent who has been battered or subjected to extreme cruelty in the United States by that parent's spouse or by a member of the spouse's family residing in the same household as the parent and the spouse consented or acquiesced to such battery or cruelty, but only if (in the opinion of the agency providing such benefits) there is a substantial connection between such battery or cruelty and the need for the benefits to be provided; and

(B)

who meets the requirement of subparagraph (B) of paragraph (1).

This subsection shall not apply to an alien during any period in which the individual responsible for such battery or cruelty resides in the same household or family eligibility unit as the individual subjected to such battery or cruelty.

After consultation with the Secretaries of Health and Human Services, Agriculture, and Housing and Urban Development, the Commissioner of Social Security, and with the heads of such Federal agencies administering benefits as the Attorney General considers appropriate, the Attorney General shall issue guidance (in the Attorney General's sole and unreviewable discretion) for purposes of this subsection and section 1631(f) of this title, concerning the meaning of the terms "battery" and "extreme cruelty", and the standards and methods to be used for determining whether a substantial connection exists between battery or cruelty suffered and an individual's need for benefits under a specific Federal, State, or local program

[1] So in original. The semicolon probably should be a comma.

[2] So in original. The period probably should be a comma.

[3] So in original. The semicolon probably should be

