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AB-2287 Inuit. (2023-2024)

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Assembly Bill No. 2287

CHAPTER 104

An act to amend Sections 14839, 14840, and 8880.56 of the Government Code, to amend Sections 2000, 2051, and 10115.1 of the Public Contract Code, and to amend Section 94.4 of the Streets and Highways Code, relating to Inuit.

[Approved by Governor July 15, 2024. Filed with Secretary of State July 15, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2287, Chen. Inuit.

Existing law includes the term "Eskimo" and "Eskimos."

This bill would make nonsubstantive changes to those provisions to change the term "Eskimo" to "Inuk" and "Eskimos" to "Inuit." The bill would also make other nonsubstantive revisions.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 14839 of the Government Code is amended to read:

14839. (a) 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:

- (1) 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.
- (2) Coordinating with the federal Small Business Administration, the Minority Business Development Agency, the California Disabled Veteran Business Enterprise Program Advocate, appointed by the Secretary of the Department of Veterans Affairs pursuant to Section 999.11 of the Military and Veterans Code, and the Small Business Advocate, appointed by the Governor pursuant to Section 12098.3.
- (3) 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.
- (4) Assisting small businesses, microbusinesses, and disabled veteran business enterprises, in complying with the procedures for bidding on state contracts.
- (5) 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.

(6) 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, minority-owned business, women-owned business, LGBTQ-owned business, and disabled veteran business enterprise participation.

(7) Developing, 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, including, but not limited to, those specified in Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(8) Making efforts to develop, in cooperation with associations representing counties, cities, and special districts, a core statewide small business certification application that may be adopted by all participating entities, with any supplemental provisions to be added as necessary by the respective entities.

(9) Marketing the benefits and availability of state small business certification to businesses that currently hold a federal certification as a disadvantaged business enterprise.

(10) Making available the option for an applicant or certified firm to voluntarily identify that the business is at least 51 percent owned by, and whose management and daily operations are controlled by, one or more individuals who identify as any of the following:

(A) 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, Inuk, 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 North Marianas); Asian-Indian (a person whose origins are from India, Pakistan, or Bangladesh).

(B) A woman.

(C) LGBTQ.

(b) Notwithstanding any other law, including Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code, the department may publicly display the information specified in paragraph (10) of subdivision (a) within the certification profile of the firm using the state's certification system.

(c) The information furnished by each contractor requesting a small business or microbusiness preference shall be under penalty of perjury.

SEC. 2. Section 14840 of the Government Code is amended to read:

14840. (a) (1) In the process of certifying and determining the eligibility of a disabled veteran business enterprise or a small business enterprise, including a microbusiness, the department shall require the applicant or certified firm to submit a written declaration, under penalty of perjury, that the information submitted to the department pursuant to this chapter, and in the case of a disabled veteran enterprise all information submitted to the department pursuant to Section 999.2 of the Military and Veterans Code, is true and correct.

(2) The department shall make available the option for an applicant or certified firm to voluntarily identify that the business is at least 51 percent owned by, and whose management and daily operations are controlled by, one or more individuals who identifies as any of the following:

(A) 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, Inuk, 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 North Marianas); Asian-Indian (a person whose origins are from India, Pakistan, or Bangladesh).

(B) A woman.

(C) LGBTQ.

(3) Notwithstanding any other law, including Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code, the department may publicly display this information within the certification profile of the firm using the state's certification system.

(b) (1) If the department determines that just cause exists, it may require the owner of the disabled veteran business enterprise, microbusiness, or small business, the applicant, or the certified firm to complete and submit to the department a federal Form 4506-T from the Internal Revenue Service, United States Department of the Treasury, requesting a transcript of a tax return.

(2) For the purposes of this subdivision, "just cause" means either of the following circumstances exist:

(A) The department receives a complaint regarding the certified firm.

(B) The department determines, based on its findings during the course of any certification eligibility review of the applicant or certified firm, that the action described in paragraph (1) is necessary.

SEC. 3. Section 8880.56 of the Government Code is amended to read:

8880.56. (a) Notwithstanding other provisions of law, the director may purchase or lease goods and services as are necessary for effectuating the purposes of this chapter. The director may not contract with any private party for the operation and administration of the California State Lottery, created by this chapter. However, this section does not preclude procurements which integrate functions such as game design, supply, advertising, and public relations. In all procurement decisions, the director shall, subject to the approval of the commission, award contracts to the responsible supplier submitting the lowest and best proposal that maximizes the benefits to the state in relation to the areas of security, competence, experience, and timely performance, shall take into account the particularly sensitive nature of the California State Lottery and shall act to promote and ensure integrity, security, honesty, and fairness in the operation and administration of the lottery and the objective of raising net revenues for the benefit of the public purpose described in this chapter.

(b) Notwithstanding any other provision of this chapter, the following shall apply to contracts or procurement by the lottery:

(1) To ensure the fullest competition, the commission shall adopt and publish competitive bidding procedures for the award of any procurement or contract involving an expenditure of more than one hundred thousand dollars (\$100,000). The competitive bidding procedures shall include, but not be limited to, requirements for submission of bids and accompanying documentation, guidelines for the use of requests for proposals, invitations to bid, or other methods of bidding, and a bid protest procedure. The director shall determine whether the goods or services subject to this paragraph are available through existing contracts or price schedules of the Department of General Services.

(2) The contracting standards, procedures, and rules contained in this subdivision shall also apply with respect to any subcontract involving an expenditure of more than one hundred thousand dollars (\$100,000). The commission shall establish, as part of its bidding procedures for general contracts, subcontracting guidelines that implement this requirement.

(3) The provisions of Article 1 (commencing with Section 11250) of Chapter 3 of Part 1 of Division 3 apply to the commission.

(4) The commission is subject to the Small Business Procurement and Contract Act, as provided in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3.

(5) In advertising or awarding any general contract for the procurement of goods and services exceeding five hundred thousand dollars (\$500,000), the commission and the director shall require all bidders or contractors, or both, to include specific plans or arrangements to utilize subcontracts with socially and economically disadvantaged small business concerns. The subcontracting plans shall delineate the nature and extent of the services to be utilized, and those concerns or individuals identified for subcontracting if known.

It is the intention of the Legislature in enacting this section to establish as an objective of the utmost importance the advancement of business opportunities for these small business concerns in the private business activities created by the California State Lottery. In that regard, the commission and the director shall have an affirmative duty to achieve the most feasible and practicable level of participation by socially and economically disadvantaged small business concerns in its procurement programs.

By July 1, 1986, the commission shall adopt proposal evaluation procedures, criteria, and contract terms which are consistent with the advancement of business opportunities for small business concerns in the private business activities created by the California State Lottery and which will achieve the most feasible and practicable level of participation by socially and economically disadvantaged small business concerns in its procurement programs. The proposal evaluation procedures, criteria, and contract terms adopted shall be reported in writing to both houses of the Legislature on or before July 1, 1986.

For the purposes of this section, socially and economically disadvantaged persons include women, Black Americans, Hispanic Americans, Native Americans (including American Indians, Inuit, Aleuts, and Native Hawaiians), Asian-Pacific Americans (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), and other minorities or any other natural persons found by the commission to be disadvantaged.

The commission shall report to the Legislature by July 1, 1987, and by each July 1 thereafter, on the level of participation of small businesses, socially and economically disadvantaged businesses, and California businesses in all contracts awarded by the commission.

(6) The commission shall prepare and submit to the Legislature by October 1 of each year a report detailing the lottery's purchase of goods and services through the Department of General Services. The report shall also include a listing of contracts awarded for more than one hundred thousand dollars (\$100,000), the name of the contractor, amount and term of the contract, and the basis upon which the contract was awarded.

The lottery shall fully comply with the requirements of paragraphs (2) to (5), inclusive, except that any function or role which is otherwise the responsibility of the Department of Finance or the Department of General Services shall instead, for purposes of this subdivision, be the sole responsibility of the lottery, which shall have the sole authority to perform that function or role.

SEC. 4. Section 2000 of the Public Contract Code is amended to read:

2000. (a) Notwithstanding any other provision of law requiring a local agency to award contracts to the lowest responsible bidder, a local agency may require that a contract be awarded to the lowest responsible bidder who also does either of the following:

(1) Meets goals and requirements established by the local agency relating to participation in the contract by minority business enterprises and women business enterprises. If the bidder does not meet the goals and requirements established by the local agency for that participation, the local agency shall evaluate the good faith effort of the bidder to comply with those goals and requirements as provided in paragraph (2).

(2) Makes a good faith effort, in accordance with the criteria established pursuant to subdivision (b), prior to the time bids are opened, to comply with the goals and requirements established by the local agency relating to participation in the contract by minority or women business enterprises.

(b) (1) The bidder attended any presolicitation or prebid meetings that were scheduled by the local agency to inform all bidders of the minority and women business enterprise program requirements for the project for which the contract will be awarded. A local agency may waive this requirement if it determines that the bidder is informed as to those program requirements.

(2) The bidder identified and selected specific items of the project for which the contract will be awarded to be performed by minority or women business enterprises to provide an opportunity for participation by those enterprises.

(3) The bidder advertised, not less than 10 calendar days before the date the bids are opened, in one or more daily or weekly newspapers, trade association publications, minority or trade oriented publications, trade journals, or other media, specified by the local agency for minority or women business enterprises that are interested in participating in the project. This paragraph applies only if the local agency gave public notice of the project not less than 15 calendar days prior to the date the bids are opened.

(4) The bidder provided written notice of the bidder's interest in bidding on the contract to the number of minority or women business enterprises required to be notified by the project specifications not less than 10 calendar days prior to the opening of bids. To the extent possible, the local agency shall make available to the bidder not less than 15 calendar days prior to the date the bids are opened a list or a source of lists of enterprises which are certified by the local agency as minority or women business enterprises. If the local agency does not provide that list or source of lists to the bidder, the bidder may utilize the list of certified minority or women business enterprises prepared by the Department of Transportation pursuant to Section 14030.5 of the Government Code for this purpose.

(5) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested in performing specific items of the project.

(6) The bidder provided interested minority and women business enterprises with information about the plans, specifications, and requirements for the selected subcontracting or material supply work.

(7) The bidder requested assistance from minority and women community organizations; minority and women contractor groups; local, state, or federal minority and women business assistance offices; or other organizations that provide assistance in the recruitment and placement of minority or women business enterprises, if any are available.

(8) The bidder negotiated in good faith with the minority or women business enterprises, and did not unjustifiably reject as unsatisfactory bids prepared by any minority or women business enterprises, as determined by the local agency.

(9) Where applicable, the bidder advised and made efforts to assist interested minority and women business enterprises in obtaining bonds, lines of credit, or insurance required by the local agency or contractor.

(10) The bidder's efforts to obtain minority and women business enterprise participation could reasonably be expected by the local agency to produce a level of participation sufficient to meet the goals and requirements of the local agency.

(c) The performance by a bidder of all of the criteria specified in subdivision (b) shall create a rebuttable presumption, affecting the burden of producing evidence, that a bidder has made a good faith effort to comply with the goals and requirements relating to participation by minority and women business enterprises established pursuant to subdivision (a).

(d) "Local agency," as used in this section, means a county or city, whether general law or chartered, city and county, school district, or other district. "District," as used in this section, 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.

(e) "Minority or women business enterprise," as used in this section, means a business enterprise that meets both of the following criteria:

(1) A business that is at least 51 percent owned by one or more minority persons or 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 minority persons or women.

(2) A business whose management and daily business operations are controlled by one or more minority persons or women.

(f) "Minority person," for purposes of this section, means Black Americans, Hispanic Americans, Native Americans (including American Indians, Inuit, Aleuts, and Native Hawaiians), Asian-Pacific Americans (including persons whose origins are from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the United States Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, and Taiwan), or any other group of natural persons identified as minorities in the project specifications by the local agency.

(g) This section does not apply to any of the following:

(1) A contract, funded in whole or in part by the federal government, to the extent of any conflict between the requirements imposed by this section and any requirements imposed by the federal government relating to participation in a contract by a minority or women business enterprise as a condition of receipt of the federal funds.

(2) The San Francisco Bay Area Rapid Transit District, the Los Angeles County Transportation Commission, or any other local agency that has authority to facilitate the participation of minority or women business enterprises substantially similar to the authority granted to the San Francisco Bay Area Rapid Transit District pursuant to Section 20229 of this code or the Los Angeles County Transportation Commission pursuant to Section 130239 of the Public Utilities Code.

SEC. 5. Section 2051 of the Public Contract Code is amended to read:

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, Inuit, 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) "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.

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

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

SEC. 6. Section 10115.1 of the Public Contract Code is amended to read:

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

(a) "Awarding department" means a 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 an 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 a 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, Inuk, 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.

SEC. 7. Section 94.4 of the Streets and Highways Code is amended to read:

94.4. (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 minority 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 certification or denial of certification of any entity as a minority 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 certification as a minority business enterprise.

(4) Knowingly and willfully 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 article.

(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) 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.

(d) For the purposes of this section, "minority" means an individual who can be identified as being part of one of the following groups:

(1) Black Americans, including, but are not limited to, persons having origins in any of the Black racial groups of Africa.

(2) Hispanic Americans, including, but are not limited to, persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

(3) Native Americans, including, but are not limited to, persons who are American Indians, Inuit, Aleuts, or Native Hawaiians.

(4) Asian-Pacific Americans, including, but are not limited to, persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the U.S. Trust Territories of the Pacific, and the Northern Marianas.

(5) Asian-Indian Americans, including, but are not limited to, persons whose origins are from India, Pakistan, and Bangladesh.

(6) Those persons determined by the department, on a case-by-case basis, as socially and economically disadvantaged in accordance with applicable federal regulations.

(e) For the purposes of this section, "minority business enterprise" means a small business concern, as defined in Section 632 of Title 15 of the United States Code, and which also meets the following requirements:

(1) It is at least 51 percent owned by one or more women or minority individuals or, in the case of any publicly-owned business, at least 51 percent of its stock is owned by one or more women or minority individuals.

(2) Its management and daily business operations are controlled by one or more of the women or minority individuals who own it.