

CLIENT NEWS BRIEF

New Law Updates Bidding Preferences for Various Public Agencies

The Legislature has significantly expanded local agencies' ability to use a small business preferences on a public works projects, and has expanded the use of preferences for small businesses, disabled veterans businesses and social enterprises in some counties. This new law seems to indicate the Legislature is responding to the desire of local agencies to support local businesses.

Assembly Bill (AB) 2762, signed by Governor Jerry Brown, increases the small business preference from five percent to seven percent for all local agencies, including counties, cities, school districts, and other districts. The bill limits the value of a preference to a maximum of \$150,000 on any contract, no matter the value of that contract. The small business preference authorizes a local agency, in facilitating contract awards to small businesses, to provide for a small business preference in construction, the procurement of goods, or the delivery of services.

AB 2762 also authorizes local agencies in the counties of Alameda, Contra Costa, Lake, Los Angeles, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma, to adopt preferences for disabled veteran businesses and social enterprises, and provides for the preferences to be a maximum of seven percent for an individual preference and up to fifteen percent for a single bid having two or more preferences. In these counties, an agency's ability to use a small business preference is not different from agencies outside those counties.

This new law defines a social enterprise to include a nonprofit or for-profit business whose primary purpose is to benefit the economic, environmental, or social health of the community and which uses the methods and disciplines of business and the power of the marketplace to advance its social, environmental, and human justice agendas. The business must also have been in operation for at least one year providing transitional or permanent employment to a transitional workforce or providing social, environmental, or human justice services.

Under AB 2762, each local agency within the specified counties that chooses to utilize a disabled veteran business or social enterprise preference is authorized to define a disabled veteran business and social enterprise and to define their eligibility for the purposes of these preferences and goals. The statute granting authority in certain counties to utilize preferences is set to expire in 2024. However, the statute permitting small business preferences by all local agencies in the state has no expiration date.

To help local agencies meet these preferences, the new law permits a prime contractor, with the approval of the local agency, and subject to meeting specified conditions, to substitute one subcontractor for another, if doing so will help meet the preference adopted by the agency. This provision seems to create a scenario where a subcontractor could be substituted solely in the interest of meeting the agency's adopted preference, but the new law explicitly states that subcontractors are still afforded all the protections of the Subletting and Subcontracting Fair Practices Act.

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Takeaways

AB 2762 demonstrates a greater interest by the Legislature in allowing public agencies to adopt preferences for certain types of businesses. Agencies wishing to adopt such preferences should first review their existing policies and bidding practices for any needed updates to comply with the new law.

For more information on AB 2762, or preferences in bidding generally, including for assistance in drafting policies and bid documents to implement preferences, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also visit our [website](#), follow us on [Facebook](#) or [Twitter](#) or download our [Client News Brief App](#).

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