

AMENDED IN SENATE JUNE 16, 2003

AMENDED IN ASSEMBLY APRIL 24, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 323

Introduced by Assembly Member Parra

February 7, 2003

~~An act to amend Sections 999, 999.2, 999.7, 999.9, 999.11, and 999.12—An act to add Article 7 (commencing with Section 999.50) to Chapter 6 of Division 4 of the Military and Veterans Code, relating to veterans.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 323, as amended, Parra. ~~Disabled veteran business enterprises~~
Nonprofit veteran service agencies.

Existing law authorizes any state agency, city, county, political subdivision, or district to, without advertising or calling for bids, purchase materials and supplies manufactured by, and services provided by, certain nonprofit California corporations, and to equitably apportion the business among those corporations, provided certain requirements are met.

This bill would authorize any state agency, city, county, political subdivision, or district to, without advertising or calling for bids, purchase goods manufactured by, and services provided by, nonprofit veteran service agencies, as defined, and to equitably apportion the purchases among those agencies, provided certain requirements are met.



This bill would state the intent of the Legislature in enacting these provisions.

~~Existing law establishes a 3% statewide participation goal for disabled veteran business enterprises for specified types of contracts, and requires the Department of Veterans Affairs and the departments awarding the contracts to appoint disabled veteran business enterprise advocates to assist in meeting the participation goals.~~

~~This bill would additionally include nonprofit veteran service agencies, as defined, within the 3% statewide participation goal, require that each awarding department report on the level of participation by nonprofit veteran service agencies each year, and apply certain penalty provisions to nonprofit veteran service agencies. This bill would also require the advocates appointed by the Department of Veterans Affairs and the awarding departments to perform additional duties related to nonprofit veteran service agencies.~~

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

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

1 ~~SECTION 1.—Section 999 of the Military and Veterans Code~~
2 *SECTION 1. Article 7 (commencing with Section 999.50) is*
3 *added to Chapter 6 of Division 4 of the Military and Veterans*
4 *Code, to read:*

5
6 *Article 7. Contracts with Nonprofit Veteran Service Agencies*
7
8 *999.50. It is the intent of the Legislature in enacting this*
9 *article to do the following:*

10 *(a) Encourage state agencies, cities, counties, districts, and*
11 *other political subdivisions to purchase goods manufactured by,*
12 *and services provided by, a nonprofit veteran service agency*
13 *whenever it is both feasible to do so and the location of the*
14 *nonprofit veteran service agency makes the purchases reasonably*
15 *convenient.*

16 *(b) Provide equality of competitive advantage for nonprofit*
17 *veteran service agencies.*

18 *999.51. (a) Any state agency, city, county, district, or other*
19 *political subdivision may, without advertising or calling for bids,*
20 *purchase goods manufactured by, and services provided by, a*



1 nonprofit veteran service agency that has indicated an interest in
2 supplying those goods and services, and may, on an equitable
3 basis, apportion these purchases among the interested nonprofit
4 veteran service agencies.

5 (b) The state agency, city, county, political subdivision, or
6 district may make and apportion the purchases authorized by
7 subdivision (a) provided all of the following conditions are met:

8 (1) The goods or services meet the specifications and needs of
9 the purchasing agency.

10 (2) The goods or services are purchased at a fair market price,
11 as determined by the appropriate state or local agency.

12 (3) The nonprofit veteran service agency complies with all of
13 the following requirements:

14 (A) The nonprofit veteran service agency shall employ veterans
15 receiving services from the nonprofit veteran service agency for
16 not less than 75 percent of the person-hours of direct labor
17 required for the production of goods and the provision of services
18 performed pursuant to a contract under this section during the
19 fiscal year.

20 (B) The nonprofit veteran service agency agrees to make those
21 elections permitted of any nonprofit corporation under the Federal
22 Insurance Contributions Act (26 U.S.C. Sec. 3103 et seq.) and the
23 Unemployment Insurance Code in order to provide social security
24 and unemployment and disability benefits for its employees,
25 commencing with its first contract or purchase order under this
26 section and continuing thereafter. In the event that the nonprofit
27 veteran service agency ceases to provide those benefits, any
28 existing contract or purchase order under this section with the
29 nonprofit veteran service agency is terminated and no further
30 contracts or purchase orders shall be awarded to that nonprofit
31 veteran service agency for the period of two years after the
32 nonprofit veteran service agency ceases to provide the benefits.

33 (C) The nonprofit veteran service agency does not commit any
34 unfair labor practices, as defined in the National Labor Relations
35 Act, at Section 158 of Title 29 of the United States Code.

36 (D) The nonprofit veteran service agency abides by the
37 provisions of the federal Fair Labor Standards Act of 1938 (29
38 U.S.C. Sec. 201 et seq.), the Walsh-Healy Public Contract Act (41
39 U.S.C. Sec. 35 et seq.), and the regulations of the Department of
40 Industrial Relations (8 Cal. Code Regs. 1 et seq.).



1 (c) For purposes of this section:

2 (1) "Nonprofit veteran service agency" means a
3 community-based organization that meets the following
4 requirements:

5 (A) It is exempt from tax under Section 501(c)(3) of the Internal
6 Revenue Code.

7 (B) Its principal purpose is to provide housing, substance
8 abuse, case management, and employment training services for
9 low-income, disabled, or homeless veterans and their families.

10 (2) "Direct labor" includes all work required for preparation,
11 processing, and packing of a good, or work directly relating to the
12 performance of a service, excluding supervision, administration,
13 inspection, and shipping.

14 (3) A veteran receiving services from the nonprofit veteran
15 service agency shall be considered an employee when performing
16 productive work.

17 is amended to read:

18 999.—As used in this article, the following definitions apply:

19 (a) ~~"Administering agency" means the Treasurer in the case of~~
20 ~~contracts for professional bond services, and the Department of~~
21 ~~General Services' Office of Small Business Certification and~~
22 ~~Resources, formerly known as the Office of Small and Minority~~
23 ~~Business, in the case of contracts governed by Section 999.2.~~

24 (b) ~~"Awarding department" means any state agency,~~
25 ~~department, governmental entity, or other officer or entity~~
26 ~~empowered by law to issue bonds or enter into contracts on behalf~~
27 ~~of the State of California.~~

28 (c) ~~"Bonds" means bonds, notes, warrants, certificates of~~
29 ~~participation, and other evidences of indebtedness issued by or on~~
30 ~~behalf of the State of California.~~

31 (d) ~~"Contract" includes any agreement or joint agreement to~~
32 ~~provide professional bond services to the State of California or an~~
33 ~~awarding department. "Contract" also includes any agreement or~~
34 ~~joint development agreement to provide labor, services, material,~~
35 ~~supplies, or equipment in the performance of a contract, franchise,~~
36 ~~concession, or lease granted, let, or awarded for and on behalf of~~
37 ~~the State of California.~~

38 (e) ~~"Contractor" means any person or persons, regardless of~~
39 ~~race, color, creed, national origin, ancestry, sex, marital status,~~
40 ~~disability, religious or political affiliation, or age, or any sole~~



1 proprietorship, firm, partnership, joint venture, corporation, or
2 combination thereof who submits a bid and enters into a contract
3 with a representative of a state agency, department, governmental
4 entity, or other officer empowered by law to enter into contracts
5 on behalf of the State of California. “Contractor” includes any
6 provider of professional bond services who enters into a contract
7 with an awarding department.

8 (f) “Disabled veteran” means a veteran of the military, naval,
9 or air service of the United States, including, but not limited to, the
10 Philippine Commonwealth Army, the Regular Scouts (“Old
11 Scouts”), and the Special Philippine Scouts (“New Scouts”), with
12 a service-connected disability who is a resident of the State of
13 California.

14 (g) (1) “Disabled veteran business enterprise” means a
15 business concern certified by the administering agency as meeting
16 all of the following requirements:

17 (A) It is a sole proprietorship at least 51 percent owned by one
18 or more disabled veterans or, in the case of a publicly owned
19 business, at least 51 percent of its stock is owned by one or more
20 disabled veterans; a subsidiary which is wholly owned by a parent
21 corporation, but only if at least 51 percent of the voting stock of
22 the parent corporation is owned by one or more disabled veterans;
23 or a joint venture in which at least 51 percent of the joint venture’s
24 management and control and earnings are held by one or more
25 disabled veterans.

26 (B) The management and control of the daily business
27 operations are by one or more disabled veterans. The disabled
28 veterans who exercise management and control are not required to
29 be the same disabled veterans as the owners of the business
30 concern.

31 (C) It is a sole proprietorship, corporation, or partnership with
32 its home office located in the United States, which is not a branch
33 or subsidiary of a foreign corporation, foreign firm, or other
34 foreign-based business.

35 (2) Notwithstanding paragraph (1), after the death or the
36 certification of a permanent medical disability of a disabled
37 veteran who is a majority owner of a business concern that
38 qualified as a disabled veteran business enterprise prior to that
39 death or certification of a permanent medical disability, and solely
40 for purposes of any contract entered into before that death or



1 ~~certification, that business concern shall be deemed to be a~~
2 ~~disabled veteran business enterprise for a period not to exceed~~
3 ~~three years after the date of that death or certification of a~~
4 ~~permanent medical disability, if the business concern is inherited~~
5 ~~or controlled by the spouse or child of that majority owner, or by~~
6 ~~both of those persons.~~

7 ~~(h) “Foreign corporation,” “foreign firm,” and~~
8 ~~“foreign-based business” means a business entity that is~~
9 ~~incorporated or has its principal headquarters located outside the~~
10 ~~United States of America.~~

11 ~~(i) “Goal” means a numerically expressed objective that~~
12 ~~awarding departments and contractors are required to make efforts~~
13 ~~to achieve.~~

14 ~~(j) “Management and control” means effective and~~
15 ~~demonstrable management of the business entity.~~

16 ~~(k) “Nonprofit veteran service agency” means a~~
17 ~~community-based organization, exempt from tax under Section~~
18 ~~501(e)(3) of the Internal Revenue Code, that is certified by the~~
19 ~~administering agency as meeting the following requirements:~~

20 ~~(1) The organization’s purpose is to provide housing, substance~~
21 ~~abuse, case management, and employment training services for~~
22 ~~low-income, disabled, and homeless veterans and their families.~~

23 ~~(2) The organization will employ program participants in~~
24 ~~performing contracts acquired pursuant to this article.~~

25 ~~(l) “Professional bond services” include services as financial~~
26 ~~advisers, bond counsel, underwriters in negotiated transactions,~~
27 ~~underwriter’s counsel, financial printers, feasibility consultants,~~
28 ~~and other professional services related to the issuance and sale of~~
29 ~~bonds.~~

30 ~~SEC. 2.—Section 999.2 of the Military and Veterans Code is~~
31 ~~amended to read:~~

32 ~~999.2.—Notwithstanding any other provision of law, contracts~~
33 ~~awarded by any state agency, department, officer, or other state~~
34 ~~governmental entity, including school districts when they are~~
35 ~~expending state funds for construction, professional services~~
36 ~~(except those subject to Chapter 6 (commencing with Section~~
37 ~~16850) of Part 3 of Division 4 of Title 2 of the Government Code),~~
38 ~~materials, supplies, equipment, alteration, repair, or improvement~~
39 ~~shall have statewide participation goals of not less than 3 percent~~
40 ~~for disabled veteran business enterprises or nonprofit veteran~~



1 service agencies. These goals apply to the overall dollar amount
2 expended each year by the awarding department.

3 ~~SEC. 3. Section 999.7 of the Military and Veterans Code is~~
4 ~~amended to read:~~

5 ~~999.7. (a) Notwithstanding Section 7550.5 of the~~
6 ~~Government Code, on January 1 of each year, each awarding~~
7 ~~department shall report to the Governor, the Legislature, the Office~~
8 ~~of Small Business Certification and Resources, and the~~
9 ~~Department of Veterans Affairs on the level of participation by~~
10 ~~disabled veteran business enterprises and nonprofit veteran~~
11 ~~service agencies in contracts identified in this article for the~~
12 ~~previous fiscal year. If the established goals are not met, the~~
13 ~~awarding department shall report to the Legislature, the Office of~~
14 ~~Small Business Certification and Resources, and the Department~~
15 ~~of Veterans Affairs the reasons for the awarding department's~~
16 ~~inability to achieve the goals and identify steps it shall take in an~~
17 ~~effort to achieve the goals.~~

18 ~~(b) Notwithstanding Section 7550.5 of the Government Code,~~
19 ~~on April 1 of each year, the Office of Small Business Certification~~
20 ~~and Resources shall prepare for the Governor, the Legislature, and~~
21 ~~the Department of Veterans Affairs a statewide statistical summary~~
22 ~~detailing each awarding department's goal achievement and a~~
23 ~~statewide total of those goals.~~

24 ~~SEC. 4. Section 999.9 of the Military and Veterans Code is~~
25 ~~amended to read:~~

26 ~~999.9. (a) It shall be unlawful for a person to:~~

27 ~~(1) Knowingly and with intent to defraud, fraudulently obtain,~~
28 ~~retain, attempt to obtain or retain, or aid another in fraudulently~~
29 ~~obtaining or retaining or attempting to obtain or retain,~~
30 ~~certification as a disabled veteran business enterprise or a~~
31 ~~nonprofit veteran service agency for the purpose of this article.~~

32 ~~(2) Willfully and knowingly make a false statement with the~~
33 ~~intent to defraud, whether by affidavit, report, or other~~
34 ~~representation, to a state official or employee for the purpose of~~
35 ~~influencing the certification or denial of certification of any entity~~
36 ~~as a disabled veteran business enterprise or a nonprofit veteran~~
37 ~~service agency.~~

38 ~~(3) Willfully and knowingly obstruct, impede, or attempt to~~
39 ~~obstruct or impede, any state official or employee who is~~
40 ~~investigating the qualifications of a business entity that has~~



1 requested certification as a disabled veteran business enterprise or
2 nonprofit veteran service agency.

3 ~~(4) Knowingly and with intent to defraud, fraudulently obtain,
4 attempt to obtain, or aid another person in fraudulently obtaining
5 or attempting to obtain, public moneys to which the person is not
6 entitled under this article.~~

7 ~~(b) Any person who violates any of the provisions of
8 subdivision (a) shall be liable for a civil penalty not to exceed five
9 thousand dollars (\$5,000) for the first violation, and a civil penalty
10 not to exceed twenty thousand dollars (\$20,000) for each
11 additional or subsequent violation.~~

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

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

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

31 ~~(f) No awarding department shall enter into any contract with
32 any person suspended for violating this section during the period
33 of the person's suspension. No awarding department shall award
34 a contract to any contractor utilizing the services of any person as
35 a subcontractor suspended for violating this section during the
36 period of the person's suspension.~~

37 ~~(g) The awarding department shall check the central listing
38 provided by the office to verify that the person or contractor to
39 whom the contract is being awarded, or any person being utilized~~



1 as a subcontractor or supplier by that person or contractor, is not
2 under suspension for violating this section.

3 ~~SEC. 5.—Section 999.11 of the Military and Veterans Code is~~
4 ~~amended to read:~~

5 ~~999.11.—The Department of Veterans Affairs shall appoint an~~
6 ~~advocate to do all of the following:~~

7 ~~(a) Oversee, promote, and coordinate efforts to facilitate~~
8 ~~implementation of this article.~~

9 ~~(b) Disseminate information on this article.~~

10 ~~(c) Coordinate reports pursuant to Section 999.7.~~

11 ~~(d) Coordinate with administering agencies and existing and~~
12 ~~potential disabled veteran business enterprises and nonprofit~~
13 ~~veteran service agencies to achieve the goals specified in Sections~~
14 ~~999.1 and 999.2.~~

15 ~~(e) Coordinate with the disabled veteran business enterprise~~
16 ~~advocates appointed in all awarding departments pursuant to~~
17 ~~Section 999.12.~~

18 ~~SEC. 6.—Section 999.12 of the Military and Veterans Code is~~
19 ~~amended to read:~~

20 ~~999.12.—Each awarding department shall appoint an agency~~
21 ~~disabled veteran business enterprise advocate. This person shall be~~
22 ~~the same individual appointed pursuant to Section 14846 of the~~
23 ~~Government Code. The disabled veteran business enterprise~~
24 ~~advocate shall do all of the following:~~

25 ~~(a) Assist certified disabled veteran business enterprises and~~
26 ~~certified nonprofit veteran service agencies in participating in that~~
27 ~~agency's contracting process.~~

28 ~~(b) Assist contract officers in seeking disabled veteran business~~
29 ~~enterprises and certified nonprofit veteran service agencies to~~
30 ~~participate in the agency's contract and procurement activities.~~

31 ~~(c) Disseminate information to the agency's contract and~~
32 ~~procurement staff.~~

33 ~~(d) Serve as an advocate for the disabled veteran business~~
34 ~~enterprises and nonprofit veteran service agencies that are utilized~~
35 ~~as the agency's contractors or subcontractors.~~

36 ~~(e) Report to the Office of Small Business Certification and~~
37 ~~Resources regarding any violation of this article.~~

38 ~~(f) Coordinate with the state disabled veteran business~~
39 ~~enterprise advocate at the Department of Veterans Affairs in an~~
40 ~~effort to meet the statewide 3 percent goals for disabled veteran~~



- 1 ~~business enterprises and nonprofit veteran service agencies~~
- 2 ~~provided for in Section 999.2.~~

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