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CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 177

Introduced by Assembly Members Ruskin and V. Manuel Perez
(Coauthors: Assembly Members ~~Price and Salas~~ *Beall, Block, Logue,*
***and Salas*)**
(~~Coauthor: Senator~~ Coauthors: *Senators* Negrete McLeod and Price)

February 2, 2009

An act to amend Sections 14842 and 14842.5 of the Government Code, and to amend Section 999.9 of the Military and Veterans Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 177, as amended, Ruskin. Public contracts: small businesses and disabled veteran business enterprises.

(1) Existing law provides for various programs to encourage the participation of small businesses and disabled veteran business enterprises, as certified by the Department of General Services, in state agency contracts. Existing law revokes, for a specified period, the small business or microbusiness certification of a business that obtained the classification as a small business or microbusiness by reason of having furnished incorrect supporting information or withholding relevant information, and suspends that business from transacting with the state,

as specified. Existing law extends the period of revocation and suspension for additional or subsequent violations.

This bill would increase the period of certification revocation and suspension for such violations, and additionally require the revocation of the business' seller's permit for additional or subsequent violations.

(2) Existing law also revokes, for a specified period, the small business or microbusiness or disabled veteran business enterprise certification of a person who, among other activities, fraudulently attempts to become certified as a disabled veteran business enterprise or as a small business or microbusiness. Existing law additionally suspends, for a specified period, that person from bidding on or participating in any state contract or project. Existing law extends the period of revocation and suspension for additional and subsequent violations.

This bill would increase the period of certification revocation and suspension for such violations, and additionally require the revocation of the business' seller's permit for additional or subsequent violations.

This bill would impose civil penalties against any person who knowingly and fraudulently represents that a commercially useful function is being performed by a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract, and would subject that person to revocation of the disabled veteran business enterprise certification and suspension from bidding on or participating in any state contract or project for a specified period.

This bill would additionally require that any existing contract between any awarding department and contractor be terminated if the contractor knowingly and fraudulently represents that a commercially useful function is being performed by a disabled veteran business enterprise or by a small business or microbusiness, and require the Controller to withhold any payments to that contractor except for outstanding invoices.

This bill would require persons or businesses found to have obtained small business or disabled veteran business enterprise certification by fraudulent or improper means to pay costs incurred by the awarding department or the Department of General Services, as specified.

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 14842 of the Government Code is
2 amended to read:

3 14842. (a) A business that has obtained classification as a
4 small business or microbusiness by reason of having furnished
5 incorrect supporting information or by reason of having withheld
6 information, and that knew, or should have known, the information
7 furnished was incorrect or the information withheld was relevant
8 to its request for classification, and that by reason of that
9 classification has been awarded a contract to which it would not
10 otherwise have been entitled, shall do all of the following:

11 (1) Pay to the state any difference between the contract amount
12 and what the state's costs would have been if the contract had been
13 properly awarded.

14 (2) Pay to the awarding department an amount *that is* equal to
15 the costs incurred for investigating the small business or
16 microbusiness certification that led to the finding that the contract
17 had been improperly awarded.

18 (3) In addition to the amount described in subdivision (a), be
19 assessed a penalty in an amount of not more than 10 percent of
20 the amount of the contract involved.

21 (b) Suspend any person who violates subdivision (a) from
22 transacting any business with the state either directly as a prime
23 contractor or indirectly as a subcontractor, for a period of not less
24 than three years and not more than 10 years. State agencies may
25 reject the bid of a supplier offering goods, information technology,
26 or services manufactured or provided by a subcontractor if that
27 subcontractor has been declared ineligible to transact any business
28 with the state under this chapter, even though the bidder is a
29 business in good standing.

30 (c) All payments to the state pursuant to paragraphs (1) and (2)
31 of subdivision (a) shall be deposited in the fund out of which the
32 contract involved was awarded.

33 (d) All payments to the state pursuant to paragraph (3) of
34 subdivision (a) shall be deposited in the state General Fund.

35 (e) The small business certification of a business found to have
36 violated subdivision (a) shall be revoked by the department for a
37 period of not less than five years. For an additional or subsequent
38 violation, the period of certification revocation or suspension shall

1 be extended for a period of up to 10 years and shall result in the
2 revocation of the business' seller's permit. The certification
3 revocation shall apply to the principals of the business and any
4 subsequent businesses formed by those principals.

5 (f) Prior to the imposition of any sanctions under this article, a
6 business shall be entitled to a public hearing and to at least five
7 working days' notice of the time and place thereof. The notice
8 shall state the reasons for the hearing.

9 SEC. 2. Section 14842.5 of the Government Code is amended
10 to read:

11 14842.5. (a) It shall be unlawful for a person to do any of the
12 following:

13 (1) Knowingly and with intent to defraud, fraudulently obtain,
14 retain, attempt to obtain or retain, or aid another in fraudulently
15 obtaining or retaining or attempting to obtain or retain, certification
16 as a small business or microbusiness enterprise for the purposes
17 of this chapter.

18 (2) Willfully and knowingly make a false statement with the
19 intent to defraud, whether by affidavit, report, or other
20 representation, to a state official or employee for the purpose of
21 influencing the certification or denial of certification of any entity
22 as a small business or microbusiness enterprise.

23 (3) Willfully and knowingly obstruct, impede, or attempt to
24 obstruct or impede, any state official or employee who is
25 investigating the qualifications of a business entity that has
26 requested certification as a small business or microbusiness
27 enterprise.

28 (4) Knowingly and with intent to defraud, fraudulently obtain,
29 attempt to obtain, or aid another person in fraudulently obtaining
30 or attempting to obtain, public moneys to which the person is not
31 entitled under this chapter.

32 (5) Knowingly and with intent to defraud, fraudulently represent
33 certified small business or microbusiness participation in order to
34 obtain or retain a bid preference or a state contract.

35 (6) Knowingly and with intent to defraud, fraudulently represent
36 that a commercially useful function is being performed by a
37 certified small business or microbusiness in order to obtain or
38 retain a bid preference or a state contract.

39 (b) (1) Any person who is found by the department to have
40 violated any of the provisions of subdivision (a) is subject to a

1 civil penalty of not less than ten thousand dollars (\$10,000) nor
2 more than thirty thousand dollars (\$30,000) for the first violation,
3 and a civil penalty of not less than thirty thousand dollars (\$30,000)
4 nor more than fifty thousand dollars (\$50,000) for each additional
5 or subsequent violation.

6 (2) A person who violates any of the provisions of subdivision
7 (a) shall pay all costs incurred by the awarding department and
8 the Department of General Services for any investigations that led
9 to the finding of the violation.

10 (c) The department shall revoke the small business or
11 microbusiness certification of any person that violates subdivision
12 (a) for a period of not less than five years, and shall, in addition
13 to the penalties provided for in subdivision (b), be suspended from
14 bidding on, or participating as a contractor, a subcontractor, or a
15 supplier in, any state contract or project for a period of not less
16 than three years nor more than 10 years and shall result in the
17 revocation of the business' seller's permit. However, for an
18 additional or subsequent violation, the period of certification
19 revocation or suspension shall be extended for a period of up to
20 three years. The certification revocation shall apply to the principals
21 of the business and any subsequent businesses formed by those
22 principals. Any business or person who fails to satisfy the penalties
23 imposed pursuant to subdivisions (b) and (c) shall be prohibited
24 from further contracting with the state until the penalties are
25 satisfied.

26 (d) If a contractor, subcontractor, supplier, subsidiary, or affiliate
27 thereof, has been found by the department to have violated
28 subdivision (a) and that violation occurred within three years of
29 another violation of subdivision (a) found by the department, the
30 department shall prohibit that contractor, subcontractor, supplier,
31 subsidiary, or affiliate thereof, from entering into a state project
32 or state contract and from further bidding to a state entity, and
33 from being a subcontractor to a contractor for a state entity and
34 from being a supplier to a state entity.

35 (e) (1) In addition to the penalties imposed by this section, if
36 a contractor is found to be in violation of paragraph (6) of
37 subdivision (a) any existing contract between that contractor and
38 any awarding department shall be terminated, and the Controller
39 shall withhold any payments to that contractor except for
40 outstanding invoices.

1 (2) For purposes of this subdivision:

2 (A) “Awarding department” means any state agency,
3 department, governmental entity, or other officer or entity
4 empowered by law to enter into contracts on behalf of the State
5 of California.

6 (B) “Contractor” means any person or persons, firm, partnership,
7 corporation, or combination thereof who submits a bid and enters
8 into a contract with a representative of a state agency, department,
9 governmental entity, or other officer empowered by law to enter
10 into contracts on behalf of the State of California.

11 SEC. 3. Section 999.9 of the Military and Veterans Code is
12 amended to read:

13 999.9. (a) It shall be unlawful for a person to:

14 (1) Knowingly and with intent to defraud, fraudulently obtain,
15 retain, attempt to obtain or retain, or aid another in fraudulently
16 obtaining or retaining or attempting to obtain or retain, certification
17 as a disabled veteran business enterprise for the purpose of this
18 article.

19 (2) Willfully and knowingly make a false statement with the
20 intent to defraud, whether by affidavit, report, or other
21 representation, to a state official or employee for the purpose of
22 influencing the certification or denial of certification of any entity
23 as a disabled veteran business enterprise.

24 (3) Willfully and knowingly obstruct, impede, or attempt to
25 obstruct or impede, any state official or employee who is
26 investigating the qualifications of a business entity that has
27 requested certification as a disabled veteran business enterprise.

28 (4) Knowingly and with intent to defraud, fraudulently obtain,
29 attempt to obtain, or aid another person in fraudulently obtaining
30 or attempting to obtain, public moneys, contracts, or funds
31 expended under a contract, that are awarded by any state agency,
32 department, officer, or other state governmental agency, to which
33 the person is not entitled under this article.

34 (5) Knowingly and with intent to defraud, fraudulently represent
35 participation of a disabled veteran business enterprise in order to
36 obtain or retain a bid preference or a state contract.

37 (6) Knowingly and with intent to defraud, fraudulently represent
38 that a commercially useful function is being performed by a
39 disabled veteran business enterprise in order to obtain or retain a
40 bid preference or a state contract.

1 (7) Willfully and knowingly make or subscribe to any statement,
2 declaration, or other document that is fraudulent or false as to any
3 material matter, whether or not that falsity or fraud is committed
4 with the knowledge or consent of the person authorized or required
5 to present the declaration, statement, or document.

6 (8) Willfully and knowingly aid or assist in, or procure, counsel,
7 or advise, the preparation or presentation of a declaration,
8 statement, or other document that is fraudulent or false as to any
9 material matter, regardless of whether that falsity or fraud is
10 committed with the knowledge or consent of the person authorized
11 or required to present the declaration, statement, or document.

12 (9) Willfully and knowingly fail to file any declaration or notice
13 with the awarding agency that is required by Section 999.2.

14 (10) Establish, or knowingly aid in the establishment of, or
15 exercise control over, a firm found to have violated any of
16 paragraphs (1) to (9), inclusive.

17 (b) Any person who violates any of the provisions of subdivision
18 (a) shall be guilty of a misdemeanor punishable by imprisonment
19 in the county jail not exceeding six months or by a fine not
20 exceeding one thousand dollars (\$1,000), or by both. In addition,
21 the person shall be liable for a civil penalty of not less than ten
22 thousand dollars (\$10,000) nor more than thirty thousand dollars
23 (\$30,000) for the first violation, and a civil penalty of not less than
24 thirty thousand dollars (\$30,000) nor more than fifty thousand
25 dollars (\$50,000) for each additional or subsequent violation. A
26 defendant who violates any of the provisions of subdivision (a)
27 shall pay all costs and attorney's fees incurred by the plaintiff in
28 a civil action brought pursuant to this section, including costs
29 incurred by the awarding department or the Department of General
30 Services.

31 (c) (1) The Department of General Services shall suspend any
32 person who violates subdivision (a) from bidding on, or
33 participating as either a contractor, subcontractor, or supplier in,
34 any state contract or project for a period of not less than three years
35 and not more than 10 years, and if certified as a disabled veteran
36 business enterprise, the department shall revoke the business'
37 certification for a period of not less than five years. An additional
38 or subsequent violation shall extend the periods of suspension and
39 revocation for a period of not less than 10 years and shall result
40 in the revocation of the business' seller's permit. The suspension

1 and revocation of certification shall apply to the principals of the
2 business and any subsequent business formed or financed by, or
3 affiliated with, those principals.

4 (2) The Department of General Services shall prohibit any
5 business or person who fails to satisfy the penalties, costs, and
6 attorney’s fees imposed pursuant to subdivision (b) from further
7 contracting with the state until the penalties are satisfied.

8 (d) In addition to the penalties imposed by this section, if a
9 contractor is found to be in violation of paragraph (6) of
10 subdivision (a) any existing contract between that contractor and
11 any awarding department shall be terminated, and the Controller
12 shall withhold any payments to that contractor except for
13 outstanding invoices.

14 (e) The awarding department shall report all alleged violations
15 of this section to the Department of General Services. The
16 Department of General Services shall subsequently report all
17 alleged violations to the Attorney General who shall determine
18 whether to bring a civil action against any person or firm for a
19 violation of this section.

20 (f) The Department of General Services shall monitor the status
21 of all reported violations and shall maintain and make available
22 to all state departments a central listing of all firms and persons
23 who have been determined to have committed violations resulting
24 in suspension.

25 (g) No awarding department shall enter into any contract with
26 any person suspended for violating this section during the period
27 of the person’s suspension. No awarding department shall award
28 a contract to any contractor utilizing the services of any person as
29 a subcontractor suspended for violating this section during the
30 period of the person’s suspension.

31 (h) The awarding department shall check the central listing
32 provided by the Department of General Services to verify that the
33 person or contractor to whom the contract is being awarded, or
34 any person being utilized as a subcontractor or supplier by that
35 person or contractor, is not under suspension for violating this
36 section.

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