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CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 177

Introduced by Assembly Members Ruskin and V. Manuel Pérez

(Coauthors: Assembly Members Beall, Block, Logue, and Salas)

(Coauthors: Senators Correa, 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 and requires the business to pay specified costs to the state related to the contract.

This bill would increase the period of certification revocation and suspension for—~~sueh these~~ violations, *revoke the disabled veteran business enterprise certification of the business if the business has both certifications*, revise the types of costs payable to the state, and additionally ~~require the revocation of the business' seller's permit for additional or subsequent violations prohibit a business or person from contracting with the state until the amounts are paid~~.

(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 and imposes civil penalties upon those persons. 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, and requires the person to pay specified costs to the state related to the contract.

This bill would increase the period of certification revocation and suspension for—~~sueh these~~ violations, *and would revoke both certifications for these violations if a business is certified both as a small business or microbusiness enterprise and a disabled veteran business enterprise*.

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 authorize an awarding department and contractor to terminate a contract 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 *awarding department and*

the Controller to set off penalties and costs awarded to the state against payments due to the contractor, *as specified*.

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 state agency and the department an
15 amount that is equal to the costs incurred for investigating the
16 small business or microbusiness certification that led to the finding
17 that the contract had been improperly awarded. Costs incurred
18 shall include, but are not limited to, costs and attorney's fees paid
19 by the awarding state agency or the department related to hearings
20 and court appearances.

21 (3) In addition to the amounts described in paragraphs (1) and
22 (2), be assessed a penalty in an amount of not more than 10 percent
23 of the amount of the contract involved.

24 (b) The department shall suspend any person who violates
25 subdivision (a) from transacting any business with the state either
26 directly as a prime contractor or indirectly as a subcontractor, for
27 a period of not less than three years and not more than 10 years.
28 State agencies may reject the bid of a supplier offering goods,
29 information technology, or services manufactured or provided by

1 a subcontractor if that subcontractor has been declared ineligible
2 to transact any business with the state under this chapter, even
3 though the bidder is a business in good standing.

4 (c) All payments to the state pursuant to paragraphs (1) and (2)
5 of subdivision (a) shall be deposited in the fund or funds out of
6 which payments on the contract involved were made, except
7 payments to the department made pursuant to paragraph (2) of
8 subdivision (a) shall be deposited in the Service Revolving Fund.

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

11 (e) The small business certification, *and the disabled veteran*
12 *business enterprise certification if the business has both*
13 *certifications*, of a business found to have violated subdivision (a)
14 shall be revoked by the department for a period of not less than
15 five years. For an additional or subsequent violation, the period
16 of certification revocation or suspension shall be extended for a
17 period of up to 10 years. The certification revocation shall apply
18 to the principals of the business and any subsequent businesses
19 formed by one or more of those principals.

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

24 (g) Any business or person that fails to satisfy any of the
25 amounts specified in paragraphs (1) to (3), inclusive, of subdivision
26 (a) shall be prohibited from further contracting with the state until
27 all amounts are satisfied.

28 (h) For purposes of this section, “awarding state agency” means
29 a state agency or other state governmental entity that awarded the
30 contract, if it was not awarded by the department.

31 SEC. 2. Section 14842.5 of the Government Code is amended
32 to read:

33 14842.5. (a) It shall be unlawful for a person to do any of the
34 following:

35 (1) Knowingly and with intent to defraud, fraudulently obtain,
36 retain, attempt to obtain or retain, or aid another in fraudulently
37 obtaining or retaining or attempting to obtain or retain, certification
38 as a small business or microbusiness enterprise for the purposes
39 of this chapter.

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

6 (3) Willfully and knowingly obstruct, impede, or attempt to
7 obstruct or impede, any state official or employee who is
8 investigating the qualifications of a business entity that has
9 requested certification as a small business or microbusiness
10 enterprise.

11 (4) Knowingly and with intent to defraud, fraudulently obtain,
12 attempt to obtain, or aid another person in fraudulently obtaining
13 or attempting to obtain, public moneys, contracts, or funds
14 expended under a contract, that are awarded by any state agency,
15 department, officer, or other state governmental agency, to which
16 the person is not entitled under this chapter.

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

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

24 (7) Willfully and knowingly make or subscribe to any statement,
25 declaration, or other document that is fraudulent or false as to any
26 material matter, whether or not that falsity or fraud is committed
27 with the knowledge or consent of the person authorized or required
28 to present the declaration, statement, or document.

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

35 (9) Establish, or knowingly aid in the establishment of, or
36 exercise control over, a firm found to have violated any provision
37 of paragraphs (1) to (8), inclusive.

38 (b) (1) Any person who is found by the department to have
39 violated any of the provisions of subdivision (a) is subject to a
40 civil penalty of not less than ten thousand dollars (\$10,000) nor

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

5 (2) A person who violates any of the provisions of subdivision
6 (a) shall pay all costs incurred by the awarding department and
7 the Department of General Services for any investigations that led
8 to the finding of the violation. Costs incurred shall include, but
9 are not limited to, costs and attorney's fees paid by the awarding
10 state agency or the department related to hearings and court
11 appearances. All payments to the state pursuant to this paragraph
12 shall be deposited in the fund or funds out of which payments on
13 the contract involved were made, except payments to the
14 department shall be deposited in the Service Revolving Fund.

15 (c) The department shall revoke the small business or
16 microbusiness certification, *and the disabled veteran business*
17 *enterprise certification if the business has both certifications*, of
18 any person that violates subdivision (a) for a period of not less
19 than five years, and shall, in addition to the penalties provided for
20 in subdivision (b), ~~be suspended~~ suspend the person from bidding
21 on, or participating as a contractor, a subcontractor, or a supplier
22 in, any state contract or project for a period of not less than three
23 years nor more than 10 years. However, for an additional or
24 subsequent violation, the period of certification revocation or
25 suspension shall be extended for a period of up to three years. The
26 certification revocation shall apply to the principals of the business
27 and any subsequent businesses formed by one or more of those
28 principals. Any business or person who fails to satisfy any of the
29 penalties imposed pursuant to paragraphs (1) and (2) of subdivision
30 (b) shall be prohibited from further contracting with the state until
31 the penalties are satisfied.

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

1 (e) (1) In addition to the penalties imposed by this section, if
2 a contractor is found to be in violation of paragraph (6) of
3 subdivision (a), any existing contract between that contractor and
4 any awarding department may be terminated at the discretion of
5 the awarding state agency, and ~~the Controller, where payment to~~
~~the contractor is made directly by the state agency, the agency~~
6 shall set off penalties and costs due to the state against any
7 payments due to that contractor. *In the event that the contracting*
8 *state agency has forwarded the contract and invoices to the*
9 *Controller for payment, the state agency shall reduce the amount*
10 *due to the contractor as reflected in the claim schedule submitted*
11 *to the Controller by the amount of the penalties and costs due the*
12 *state. In addition, with regard to any penalties and costs due to*
13 *the state that the state agency has not accounted for by either a*
14 *set off against payments due to the contractor or a reduction*
15 *reflected in the claim schedule submitted to the Controller, to the*
16 *extent that the Controller is making payments to the contractor on*
17 *behalf of any state agency, the Controller shall set off penalties*
18 *and costs due against any invoices due to the contractor from any*
19 *other contract awarded to the contractor.*

21 (2) For purposes of this section:

22 (A) “Awarding state agency” means any state agency,
23 department, governmental entity, or other officer or entity
24 empowered by law to enter into contracts on behalf of the State
25 of California.

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

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

33 999.9. (a) It shall be unlawful for a person to:

34 (1) Knowingly and with intent to defraud, fraudulently obtain,
35 retain, attempt to obtain or retain, or aid another in fraudulently
36 obtaining or retaining or attempting to obtain or retain, certification
37 as a disabled veteran business enterprise for the purpose of this
38 article.

39 (2) Willfully and knowingly make a false statement with the
40 intent to defraud, whether by affidavit, report, or other

1 representation, to a state official or employee for the purpose of
2 influencing the certification or denial of certification of any entity
3 as a disabled veteran business enterprise.

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

8 (4) Knowingly and with intent to defraud, fraudulently obtain,
9 attempt to obtain, or aid another person in fraudulently obtaining
10 or attempting to obtain, public moneys, contracts, or funds
11 expended under a contract, that are awarded by any state agency,
12 department, officer, or other state governmental agency, to which
13 the person is not entitled under this article.

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

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

21 (7) Willfully and knowingly make or subscribe to any statement,
22 declaration, or other document that is fraudulent or false as to any
23 material matter, whether or not that falsity or fraud is committed
24 with the knowledge or consent of the person authorized or required
25 to present the declaration, statement, or document.

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

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

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

37 (b) Any person who violates any of the provisions of subdivision
38 (a) shall be guilty of a misdemeanor punishable by imprisonment
39 in the county jail not exceeding six months or by a fine not
40 exceeding one thousand dollars (\$1,000), or by both. In addition,

1 the person shall be liable for a civil penalty of not less than ten
2 thousand dollars (\$10,000) nor more than thirty thousand dollars
3 (\$30,000) for the first violation, and a civil penalty of not less than
4 thirty thousand dollars (\$30,000) nor more than fifty thousand
5 dollars (\$50,000) for each additional or subsequent violation. A
6 defendant who violates any of the provisions of subdivision (a)
7 shall pay all costs and attorney's fees incurred by the plaintiff in
8 a civil action brought pursuant to this section, including costs
9 incurred by the awarding department or the Department of General
10 Services.

11 (c) (1) The Department of General Services shall suspend any
12 person who violates subdivision (a) from bidding on, or
13 participating as either a contractor, subcontractor, or supplier in,
14 any state contract or project for a period of not less than three years
15 and not more than 10 years, and if certified as a disabled veteran
16 business enterprise, the department shall revoke the ~~business'~~
17 *business's certification, and the small business or microbusiness*
18 *enterprise certification if the business has both certifications*, for
19 a period of not less than five years. An additional or subsequent
20 violation shall extend the periods of suspension and revocation for
21 a period of not less than 10 years. The suspension and revocation
22 of certification shall apply to the principals of the business and
23 any subsequent business formed or financed by, or affiliated with,
24 one or more of those principals.

25 (2) A person that violates any of the provisions of subdivision
26 (a) shall pay all costs incurred by the awarding department and
27 the Department of General Services for any investigations that led
28 to the finding of the violation. Costs incurred shall include, but
29 are not limited to, costs and attorney's fees paid by the department
30 or the Department of General Services related to hearings and
31 court appearances.

32 (3) The Department of General Services shall prohibit any
33 business or person who fails to satisfy any of the penalties, costs,
34 and attorney's fees imposed pursuant to subdivisions (b) and (c)
35 from further contracting with the state until all of the penalties,
36 costs, and attorney's fees are satisfied.

37 (d) In addition to the penalties imposed by this section, if a
38 contractor is found to be in violation of paragraph (6) of
39 subdivision (a), any existing contract between that contractor and
40 any awarding department may be terminated at the discretion of

1 the awarding department, and the Controller, where payment to
2 the contractor is made directly by the state agency, the agency
3 shall set off penalties and costs due to the state against any
4 payments due to that contractor. In the event that the contracting
5 state agency has forwarded the contract and invoices to the
6 Controller for payment, the state agency shall reduce the amount
7 due to the contractor as reflected in the claim schedule submitted
8 to the Controller by the amount of the penalties and costs due the
9 state. In addition, with regard to any penalties and costs due to
10 the state that the state agency has not accounted for by either a
11 set off against payments due to the contractor or a reduction
12 reflected in the claim schedule submitted to the Controller, to the
13 extent that the Controller is making payments to the contractor on
14 behalf of any state agency, the Controller shall set off penalties
15 and costs due against any invoices due to the contractor from any
16 other contract awarded to the contractor.

17 (e) The awarding department shall report all alleged violations
18 of this section to the Department of General Services. After any
19 review and investigation it deems necessary, the Department of
20 General Services shall subsequently report all allegations which
21 have sufficient grounds to the Attorney General who shall
22 determine whether to bring a civil action against any person or
23 firm for a violation of this section. However, the Department of
24 General Services may pursue administrative action and
25 administrative penalties irrespective of whether the Attorney
26 General chooses to bring a civil action.

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

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

38 (h) The awarding department shall check the central listing
39 provided by the Department of General Services to verify that the
40 person or contractor to whom the contract is being awarded, or

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

O