

Assembly Bill No. 177

Passed the Assembly August 23, 2010

Chief Clerk of the Assembly

Passed the Senate August 18, 2010

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2010, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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 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 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 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.

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

SECTION 1. Section 14842 of the Government Code is amended to read:

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

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

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

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

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

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

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

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

(f) Prior to the imposition of any sanctions under this article, a business shall be entitled to a public hearing and to at least five

working days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

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

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

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

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

(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 small business or microbusiness enterprise for the purposes of this chapter.

(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 small business or microbusiness 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 that has requested certification as a small business or microbusiness enterprise.

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

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

(6) Knowingly and with intent to defraud, fraudulently represent that a commercially useful function is being performed by a

certified small business or microbusiness in order to obtain or retain a bid preference or a state contract.

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

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

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

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

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

(c) The department shall revoke the small business or microbusiness certification, and the disabled veteran business enterprise certification if the business has both certifications, of any person that violates subdivision (a) for a period of not less than five years, and shall, in addition to the penalties provided for in subdivision (b), suspend the person from bidding on, or participating as a contractor, a subcontractor, or a supplier in, any

state contract or project for a period of not less than three years nor more than 10 years. However, for an additional or subsequent violation, the period of certification revocation or suspension shall be extended for a period of up to three years. The certification revocation shall apply to the principals of the business and any subsequent businesses formed by one or more of those principals. Any business or person who fails to satisfy any of the penalties imposed pursuant to paragraphs (1) and (2) of subdivision (b) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) 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.

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

(2) For purposes of this section:

(A) “Awarding state agency” means any 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) “Contractor” means any person or persons, firm, partnership, corporation, or combination thereof 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.

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

999.9. (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 disabled veteran business enterprise for the purpose 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 disabled veteran 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 that has requested certification as a disabled veteran business enterprise.

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

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

(6) Knowingly and with intent to defraud, fraudulently represent 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.

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

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

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

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

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

(c) (1) The Department of General Services shall suspend any person who violates subdivision (a) from bidding on, or participating as either a contractor, subcontractor, or supplier in, any state contract or project for a period of not less than three years and not more than 10 years, and if certified as a disabled veteran business enterprise, the department shall revoke the business's certification, and the small business or microbusiness enterprise certification if the business has both certifications, for a period of not less than five years. An additional or subsequent violation shall extend the periods of suspension and revocation for a period of

not less than 10 years. The suspension and revocation of certification shall apply to the principals of the business and any subsequent business formed or financed by, or affiliated with, one or more of those principals.

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

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

(d) In addition to the penalties imposed by this section, if a contractor is found to be in violation of paragraph (6) of subdivision (a), any existing contract between that contractor and any awarding department may be terminated at the discretion of the awarding department, and, where payment to the contractor is made directly by the state agency, the agency shall set off penalties and costs due to the state against any payments due to that contractor. In the event that the contracting state agency has forwarded the contract and invoices to the Controller for payment, the state agency shall reduce the amount due to the contractor as reflected in the claim schedule submitted to the Controller by the amount of the penalties and costs due the state. In addition, with regard to any penalties and costs due to the state that the state agency has not accounted for by either a set off against payments due to the contractor or a reduction reflected in the claim schedule submitted to the Controller, to the extent that the Controller is making payments to the contractor on behalf of any state agency, the Controller shall set off penalties and costs due against any invoices due to the contractor from any other contract awarded to the contractor.

(e) The awarding department shall report all alleged violations of this section to the Department of General Services. After any review and investigation it deems necessary, the Department of General Services shall subsequently report all allegations which

have sufficient grounds to the Attorney General who shall determine whether to bring a civil action against any person or firm for a violation of this section. However, the Department of General Services may pursue administrative action and administrative penalties irrespective of whether the Attorney General chooses to bring a civil action.

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

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

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

Approved _____, 2010

Governor