

AMENDED IN ASSEMBLY APRIL 23, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1734

Introduced by Assembly Member Jones-Sawyer
(Coauthors: Assembly Members Chávez, Fox, and Melendez)

February 14, 2014

An act to add Section 14838.8 to the Government Code, to amend Sections 999, 999.1, 999.2, 999.5, 999.12, and 1104 of, *and to add Section 999.14 to*, the Military and Veterans Code, and to amend Sections 10111, 10115, 10115.13, and 10115.15 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1734, as amended, Jones-Sawyer. Public contracts: small business participation: disabled veterans.

(1) The Small Business Procurement and Contract Act requires the Director of General Services and the heads of other state agencies that enter into contracts for the provision of goods, services, and information technology and for the construction of state facilities to establish goals for the participation of small businesses in these contracts, to provide for small business preference in the award of these contracts, to give special consideration and special assistance to small businesses, and, whenever possible, to make awards to small businesses, as specified.

This bill would require all state agencies, departments, boards, and commissions to establish and achieve an annual goal of 25% small business participation in state procurements and contracts, to ensure that the state's procurement and contract processes are administered in order to meet or exceed the goal, and to report to the Director of General

Services statistics regarding small business participation in ~~his or her~~ *the* agency's procurements and contracts.

The bill would require the Department of General Services to monitor the progress of the agencies toward meeting the goal and to provide this information to the Office of Small Business Advocate.

The bill would also require a state agency, department, board, or commission that has not achieved the goal by the close of the fiscal year to submit ~~an implementation and~~ *a* corrective action plan to the Department of General Services within 45 days ~~and every year thereafter~~ *as long as that agency fails to meet or exceed the goal* *days*. The bill would require the department, in collaboration with the Office of Small Business Advocate, to undertake reasonable means to assist agencies in improving small business participation in their contracting.

The bill would require all state agencies, departments, boards, and commissions to work with the department to help small businesses market their products, goods, and services to the state by providing access to information about current bid opportunities on their Internet Web sites.

The bill would also require the Office of Small Business Advocate within the Governor's Office of Business and Economic Development to collaborate with the Department of General Services to cooperatively enhance the state's small business program by helping small businesses access capital and other financial resources necessary to successfully fulfill state contracts.

The bill ~~applies~~ *would apply* to all state public entities that receive state public funding, including the California State University, the University of California, and the California Community Colleges. In calculating the total amount of contracting covered by this bill, the California State University, the University of California, and the California Community Colleges ~~will~~ *would* only be required to meet the 25% goal for state funding used in contracting.

(2) Existing law requires a state agency, department, officer, or other state governmental entity, to meet an annual statewide participation goal of not less than 3% for disabled veteran business enterprises for specified contracts entered into by the awarding department during the year.

~~This~~ *The* bill would *gradually* increase that participation goal to 5% *by the 2017–18 fiscal year. The bill would require contracts awarded by any state agency, department, officer, or other state governmental entity for goods, services, or information technology for which the*

expected bid could be over \$100,000,000 to have this participation goal, unless the Department of General Services certifies, prior to the issuance of bid requests, that the state agency, department, officer, or other state governmental entity met its disabled veteran business enterprise goal in prior fiscal years, as specified, and will likely meet its disabled veteran business enterprise goal in the current fiscal year.

(3) Existing law requires the Director of General Services to adopt written policies and guidelines for state contracting that would provide a disabled veteran business enterprise participation incentive to bidders.

The bill would require the incentive provided to a disabled veteran business enterprise prime contractor to be higher than the incentive provided to a prime contractor that is not a disabled veteran business enterprise but that has agreed to use a disabled veteran business enterprise subcontractor.

(4) Existing law specifies the duties of the Department of Veterans Affairs with respect to the implementation of the Disabled Veteran Enterprise Program, including, among other things, a requirement to establish a system to track the effectiveness of its efforts to promote the program.

The bill would require the department to include in the tracking system a record of those businesses that became certified disabled veteran business enterprises and participated in a state contract within 2 years following the date of a promotional effort.

(5) Existing law requires the Secretary of the Department of Veterans Affairs to appoint a California Disabled Veteran Business Enterprise Program Advocate, and each awarding department to appoint an agency Disabled Veteran Business Enterprise Program Advocate, and requires each advocate to perform certain duties relating to the implementation of the of the Disabled Veteran Enterprise Program.

This bill would require the California Disabled Veteran Business Enterprise Program advocate to perform additional duties, including meeting regularly with, and assisting, agency Disabled Veteran Business Enterprise Program Advocates, serving as an advocate for the disabled veteran business enterprises, and reporting to the Office of Small Business and Disabled Veteran Business Enterprise Services, as specified. This bill would also require each agency Disabled Veteran Business Enterprise Program Advocate to perform additional duties, including maintaining records of promotional efforts hosted or attended by each agency Disabled Veteran Business Enterprise Program Advocate, as specified, and indicating which of these businesses became

certified disabled veteran business enterprises and participated in a state contract.

(6) Existing law requires the Department of General Services to make available a report on state agency contracting activity containing certain information.

This bill would require the department, for any contracting activity occurring on or after July 1, 2015, to include in that report information of the use of disabled veteran business enterprise utilization plans, as specified. The bill would prohibit the department from approving a vendor's utilization plan unless the vendor agrees to provide the department with any information the department deems necessary to meet these reporting requirements.

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 14838.8 is added to the Government
2 Code, to read:

3 14838.8. In order to encourage small business participation in
4 state contracts, all state agencies, departments, boards, and
5 commissions shall establish and achieve an annual goal of 25
6 percent small business participation in state procurements and
7 contracts.

8 (a) Notwithstanding any other provision of this chapter, the
9 heads of all state agencies, departments, boards, and commissions
10 shall ensure that the state's procurement and contract processes
11 are administered in order to meet or exceed the 25 percent small
12 business participation goal, and shall report to the Director of
13 General Services statistics regarding small business annual
14 participation in his or her agency's procurements and contracts.

15 (b) The Department of General Services shall monitor the
16 progress of all state agencies, departments, boards, and
17 commissions toward meeting the 25 percent small business
18 participation goal. The department shall regularly share information
19 with the Office of Small Business Advocate on the progress of
20 each individual agency, department, board, and commission in
21 meeting the annual goal, including, but not limited to, providing
22 copies of corrective action plans.

1 (c) (1) A state agency, department, board, or commission that
2 has not achieved the 25 percent small business participation goal
3 by the close of the fiscal year shall submit ~~an implementation and~~
4 *a* corrective action plan to the Department of General Services
5 within 45 days and annually thereafter as long as that agency fails
6 ~~to meet or exceed the goal~~ *days*.

7 (2) The Department of General Services, in collaboration with
8 the Office of Small Business Advocate, shall undertake reasonable
9 means to assist agencies in improving small business participation
10 in their contracting, including entering into memoranda of
11 understanding with the agencies that have not met the goal to
12 improve performance.

13 (d) All state agencies, departments, boards, and commissions
14 shall use the contracting procedure authorized in Section ~~14838~~
15 *14838.5* to contract with small businesses for goods and services
16 contracts under one hundred thousand dollars (\$100,000) and
17 construction contracts under one hundred twenty thousand dollars
18 (\$120,000) whenever possible.

19 (e) The Department of General Services shall actively promote
20 small business certification, help small businesses market their
21 products, goods, and services to the state, and promote the use of
22 technologies and other innovative solutions for notifying small
23 businesses of state contracting opportunities, including, but not
24 limited to, the Subscription Outreach Service of the California
25 State Contracts Register.

26 (f) The Department of General Services shall collaborate with
27 the Office of the Small Business Advocate in the office's work to
28 assist small businesses access capital and other financial resources
29 necessary to successfully fulfill state contracts.

30 (g) This section applies to all state agencies, departments,
31 boards, commissions, and other state public entities that receive
32 state funding including the University of California, the California
33 State University, and the California Community Colleges. In
34 calculating the total amount of contracting covered by this section,
35 the University of California, the California State University, and
36 the California Community Colleges shall only be required to meet
37 the 25 percent-goal for state funding used in contracting.

38 SEC. 2. Section 999 of the Military and Veterans Code is
39 amended to read:

1 999. (a) This article shall be known as, and may be cited as,
2 the California Disabled Veteran Business Enterprise Program. The
3 California Disabled Veteran Business Enterprise Program is
4 established to address the special needs of disabled veterans
5 seeking rehabilitation and training through entrepreneurship and
6 to recognize the sacrifices of Californians disabled during military
7 service. It is the intent of the Legislature that every state
8 procurement authority honor California's disabled veterans by
9 taking all practical actions necessary to meet or exceed the disabled
10 veteran business enterprise participation goal of a minimum of 5
11 percent of total contract value.

12 (b) As used in this article, the following definitions apply:

13 (1) "Administering agency" means the Treasurer in the case of
14 contracts for professional bond services, and the Department of
15 General Services' Office of Small Business and Disabled Veteran
16 Business Enterprise Services, in the case of contracts governed by
17 Section 999.2.

18 (2) "Awarding department" means a state agency, department,
19 governmental entity, or other officer or entity empowered by law
20 to issue bonds or enter into contracts on behalf of the state.

21 (3) "Bonds" means bonds, notes, warrants, certificates of
22 participation, and other evidences of indebtedness issued by, or
23 on behalf of, the state.

24 (4) "Contract" includes any agreement or joint agreement to
25 provide professional bond services to the State of California or an
26 awarding department. "Contract" also includes any agreement or
27 joint development agreement to provide labor, services, materials,
28 supplies, or equipment in the performance of a contract, franchise,
29 concession, or lease granted, let, or awarded for, and on behalf of,
30 the state.

31 (5) (A) "Contractor" means any person or persons, regardless
32 of race, color, creed, national origin, ancestry, sex, marital status,
33 disability, religious or political affiliation, age, or any sole
34 proprietorship, firm, partnership, joint venture, corporation, or
35 combination thereof that submits a bid and enters into a contract
36 with a representative of a state agency, department, governmental
37 entity, or other officer empowered by law to enter into contracts
38 on behalf of the state. "Contractor" includes any provider of
39 professional bond services who enters into a contract with an
40 awarding department.

1 (B) “Disabled veteran business enterprise contractor,
2 subcontractor, or supplier” means any person or entity that has
3 been certified by the administering agency pursuant to this article
4 and that performs a “commercially useful function,” as defined
5 below, in providing services or goods that contribute to the
6 fulfillment of the contract requirements:

7 (i) A person or an entity is deemed to perform a “commercially
8 useful function” if a person or entity does all of the following:

9 (I) Is responsible for the execution of a distinct element of the
10 work of the contract.

11 (II) Carries out the obligation by actually performing, managing,
12 or supervising the work involved.

13 (III) Performs work that is normal for its business services and
14 functions.

15 (IV) Is responsible, with respect to products, inventories,
16 materials, and supplies required for the contract, for negotiating
17 price, determining quality and quantity, ordering, installing, if
18 applicable, and making payment.

19 (V) Is not further subcontracting a portion of the work that is
20 greater than that expected to be subcontracted by normal industry
21 practices.

22 (ii) A contractor, subcontractor, or supplier will not be
23 considered to perform a “commercially useful function” if the
24 contractor’s, subcontractor’s, or supplier’s role is limited to that
25 of an extra participant in a transaction, contract, or project through
26 which funds are passed in order to obtain the appearance of a
27 disabled veteran business enterprise participation.

28 (6) “Disabled veteran” means a veteran of the military, naval,
29 or air service of the United States, including, but not limited to,
30 the Philippine Commonwealth Army, the Regular Scouts, “Old
31 Scouts,” and the Special Philippine Scouts, “New Scouts,” who
32 has at least a 10-percent service-connected disability and who is
33 domiciled in the state.

34 (7) (A) “Disabled veteran business enterprise” means a business
35 certified by the administering agency as meeting all of the
36 following requirements:

37 (i) It is a sole proprietorship at least 51-percent owned by one
38 or more disabled veterans or, in the case of a publicly owned
39 business, at least 51 percent of its stock is unconditionally owned
40 by one or more disabled veterans; a subsidiary that is wholly owned

1 by a parent corporation, but only if at least 51 percent of the voting
2 stock of the parent corporation is unconditionally owned by one
3 or more disabled veterans; or a joint venture in which at least 51
4 percent of the joint venture’s management, control, and earnings
5 are held by one or more disabled veterans.

6 (ii) The management and control of the daily business operations
7 are by one or more disabled veterans. The disabled veterans who
8 exercise management and control are not required to be the same
9 disabled veterans as the owners of the business.

10 (iii) It is a sole proprietorship, corporation, or partnership with
11 its home office located in the United States, which is not a branch
12 or subsidiary of a foreign corporation, foreign firm, or other
13 foreign-based business.

14 (B) Notwithstanding subparagraph (A), after the death or the
15 certification of a permanent medical disability of a disabled veteran
16 who is a majority owner of a business that qualified as a disabled
17 veteran business enterprise prior to that death or certification of a
18 permanent medical disability, and solely for purposes of any
19 contract entered into before that death or certification, that business
20 shall be deemed to be a disabled veteran business enterprise for a
21 period not to exceed three years after the date of that death or
22 certification of a permanent medical disability, if the business is
23 inherited or controlled by the spouse or child of that majority
24 owner, or by both of those persons.

25 (8) “Foreign corporation,” “foreign firm,” or “foreign-based
26 business” means a business entity that is incorporated or has its
27 principal headquarters located outside the United States of
28 America.

29 (9) “Goal” means a numerically expressed objective that
30 awarding departments and contractors are required to make efforts
31 to achieve.

32 (10) “Management and control” means effective and
33 demonstrable management of the business entity.

34 (11) “Professional bond services” include services as financial
35 advisers, bond counsel, underwriters in negotiated transactions,
36 underwriter’s counsel, financial printers, feasibility consultants,
37 and other professional services related to the issuance and sale of
38 bonds.

39 SEC. 3. Section 999.1 of the Military and Veterans Code is
40 amended to read:

1 999.1. (a) (1) Notwithstanding any other provision of law,
2 each awarding department shall have annual statewide participation
3 goals ~~of not less than 5 percent~~ *as specified in paragraph (2) of*
4 *subdivision (a) of Section 999.2* for disabled veteran business
5 enterprises for contracts entered into by the awarding department
6 during the year for professional bond services. This section shall
7 not apply if a contract for professional bond services of an
8 underwriter is to be obtained by competitive bid. However, each
9 awarding department shall establish goals for contracts to be
10 obtained by competitive bid for professional bond services.

11 (2) These goals shall apply to the overall dollar amount
12 expended by the awarding department with respect to the contracts
13 for professional bond services relating to the issuance of bonds by
14 the awarding department, including amounts spent as underwriter's
15 discounts.

16 (b) In attempting to meet the goals set forth in subdivision (a),
17 the awarding department shall consider establishing cocounsel,
18 joint venture, and subcontracting relationships, including disabled
19 veteran business enterprises, in all contracts for professional bond
20 services. It shall be the responsibility of the head of each awarding
21 department to be supportive of the Treasurer's program for
22 assigning representative portions of professional bond services
23 contracts for purposes of meeting the goals established pursuant
24 to this section. However, nothing in this article shall preclude the
25 awarding department from achieving the goals set forth in this
26 section without requiring joint ventures, cocounsel, or
27 subcontracting arrangements.

28 (c) This section shall not limit the ability of any awarding
29 department to meet a goal higher than those set forth in subdivision
30 (a) for the participation of disabled veteran business enterprises
31 in contracts awarded by the awarding department.

32 SEC. 4. Section 999.2 of the Military and Veterans Code is
33 amended to read:

34 999.2. (a) (1) Notwithstanding any other ~~provision of~~ law,
35 contracts awarded by any state agency, department, officer, or
36 other state governmental entity, including school districts when
37 they are expending state funds for construction, professional
38 services (except those subject to Chapter 6 (commencing with
39 Section 16850) of Part 3 of Division 4 of Title 2 of the Government
40 Code), materials, supplies, equipment, alteration, repair, or

1 improvement shall have statewide participation goals of not less
 2 than 5 percent as specified in paragraph (2) for disabled veteran
 3 business enterprises. These goals apply to the overall dollar amount
 4 expended each year by the awarding department.

5 (2) *Statewide participation goals for contracts specified in*
 6 *paragraph (1) shall be as follows:*

- 7 (A) *For the 2014–15 fiscal year, not less than 3.5 percent.*
- 8 (B) *For the 2015–16 fiscal year, not less than 4 percent.*
- 9 (C) *For the 2016–17 fiscal year, not less than 4.5 percent.*
- 10 (D) *For the 2017–18 fiscal year, and each fiscal year thereafter,*
 11 *not less than 5 percent.*

12 (b) For purposes of this section:

13 (1) “Broker” or “agent” means any individual or entity, or any
 14 combination thereof, that does not have title, possession, control,
 15 and risk of loss of materials, supplies, services, or equipment
 16 provided to an awarding department, unless one or more certified
 17 disabled veterans has 51-percent ownership of the quantity and
 18 value of the materials, supplies, services, and of each piece of
 19 equipment provided under the contract.

20 (2) “Equipment” means any piece of equipment that is used or
 21 provided for rental to any state agency, department, officer, or
 22 other state governmental entity, including equipment for which
 23 operators are provided.

24 (3) “Equipment broker” means any broker or agent who rents
 25 equipment to an awarding department.

26 (c) A disabled veteran business enterprise that rents equipment
 27 to an awarding department shall be deemed to be an equipment
 28 broker unless one or more disabled veterans has 51-percent
 29 ownership of the quantity and the value of each piece of equipment.
 30 If the equipment is owned by one or more disabled veterans, each
 31 disabled veteran owner shall, prior to performance under any
 32 contract, submit to the awarding department a declaration signed
 33 by the disabled veteran owner stating that the owner is a disabled
 34 veteran and providing the name, address, telephone number, and
 35 tax identification number of the disabled veteran owner. Each
 36 disabled veteran owner shall submit his or her federal income tax
 37 returns to the administering agency pursuant to subdivision (g) as
 38 if he or she were a disabled veteran business enterprise. The
 39 disabled veteran business enterprise of a disabled veteran owner

1 who fails to submit his or her tax returns will be deemed to be an
2 equipment broker.

3 (d) A disabled veteran business enterprise that rents equipment
4 to an awarding department shall, prior to performing the contract,
5 submit to the awarding department a declaration signed by each
6 disabled veteran owner and manager of the enterprise stating that
7 the enterprise obtained the contract by representing that the
8 enterprise was a disabled veteran business enterprise meeting and
9 maintaining all of the requirements of a disabled veteran business
10 enterprise. The declaration shall include the name, address,
11 telephone number, and tax identification number of the owner of
12 each piece of equipment identified in the contract.

13 (e) State funds expended for equipment rented from equipment
14 brokers pursuant to contracts awarded under this section shall not
15 be credited toward the ~~5-percent goal~~ *goals specified in paragraph*
16 *(2) of subdivision (a)*.

17 (f) A disabled veteran business enterprise that is a broker or
18 agent and that obtains a contract pursuant to subdivision (a) shall,
19 prior to performing the contract, disclose to the awarding
20 department that the business is a broker or agent. The disclosure
21 shall be made in a declaration signed and executed by each disabled
22 veteran owner and manager of the enterprise, declaring that the
23 enterprise is a broker or agent, and identifying the name, address,
24 and telephone number of the principal for whom the enterprise is
25 acting as a broker or agent.

26 (g) (1) A disabled veteran business enterprise, and each owner
27 thereof, shall, at the time of certification, submit to the
28 administering agency complete copies of the enterprise's federal
29 income tax returns for the three previous tax years.

30 (2) A disabled veteran business enterprise, and each owner
31 thereof, shall submit to the administering agency complete copies
32 of the enterprise's federal income tax returns that have a
33 postcertification due date, on or before the due date, including
34 extensions.

35 (3) A disabled veteran business enterprise that, and each owner
36 thereof who, has not submitted to the administering agency
37 complete copies of the enterprise's federal income tax returns for
38 the three tax years preceding certification nor for each
39 postcertification tax year for which a return was required to be
40 filed, shall have 90 days to submit those returns.

1 (4) A disabled veteran business enterprise that fails to comply
 2 with any provision of this subdivision shall be prohibited from
 3 participating in any state contract until the disabled veteran
 4 business enterprise complies with the provisions of this subdivision.
 5 Funds expended involving a disabled veteran business enterprise
 6 during any period in which that enterprise is not in compliance
 7 with the provisions of this subdivision shall not be credited toward
 8 the awarding department's ~~5-percent goal~~ *goals specified in*
 9 *paragraph (2) of subdivision (a).*

10 (h) A disabled veteran business enterprise that fails to maintain
 11 the certification requirements set forth in this article shall
 12 immediately notify the awarding department and the administering
 13 agency of that failure by filing a notice of failure that states with
 14 particularity each requirement the disabled veteran business
 15 enterprise has failed to maintain.

16 SEC. 5. Section 999.5 of the Military and Veterans Code is
 17 amended to read:

18 999.5. (a) The administering agency for the California Disabled
 19 Veteran Business Enterprise Program is the Department of General
 20 Services, except in the case of contracts for professional bond
 21 services. The Department of General Services shall consult with
 22 the California Disabled Veteran Business Enterprise Program
 23 Advocate, appointed by the Secretary of the Department of
 24 Veterans Affairs pursuant to Section 999.11, on all matters relating
 25 to the California Disabled Veteran Business Enterprise Program.
 26 ~~The~~

27 (b) *The* Director of General Services shall adopt written policies
 28 and guidelines establishing a uniform process for state contracting
 29 that would provide a disabled veteran business enterprise
 30 participation incentive to bidders. *The incentive provided to a*
 31 *disabled veteran business enterprise prime contractor shall be*
 32 *higher than the incentive provided to a prime contractor that is*
 33 *not a disabled veteran business enterprise but that has agreed to*
 34 *use a disabled veteran business enterprise subcontractor.* The
 35 incentive program shall be used by all state agencies when
 36 awarding contracts.

37 ~~(b)~~

38 (c) The Department of Veterans Affairs shall do all of the
 39 following:

1 (1) Establish a method of monitoring adherence to the goals
2 specified in Sections 999.1 and 999.2.

3 (2) Promote the California Disabled Veteran Business Enterprise
4 Program to the fullest extent possible.

5 (3) Maintain complete records of its promotional efforts,
6 *including, but not limited to, the name, location, size, and type of*
7 *business attending or participating in a promotional effort.*

8 (4) Establish a system to track the effectiveness of its efforts to
9 promote the California Disabled Veteran Business Enterprise
10 Program, which shall include ~~regular~~, *both of the following:*

11 (A) *A record of those businesses that became certified disabled*
12 *veteran business enterprises and participated in a state contract*
13 *as either a prime contractor or as a subcontractor within two years*
14 *following the date of a promotional effort.*

15 (B) *Regular*, periodic surveys of newly certified disabled veteran
16 business enterprises to determine how they learned of the program,
17 why they became certified, and what their experience with
18 awarding departments has been.

19 (d) *The California Disabled Veteran Business Enterprise*
20 *Program Advocate shall, in furtherance of the duties required by*
21 *subdivision (c) and Section 999.11, do all of the following:*

22 (1) *Meet regularly with agency Disabled Veteran Business*
23 *Enterprise Program Advocates and contract and procurement*
24 *staffs of their departments to disseminate information about the*
25 *California Disabled Veteran Business Enterprise.*

26 (2) *Assist agency Disabled Veteran Business Enterprise*
27 *Program Advocates with their requirement to assist contract*
28 *officers pursuant to subdivision (b) of Section 999.12.*

29 (3) *Serve as an advocate for the disabled veteran business*
30 *enterprises that are utilized as the agency's contractors or*
31 *subcontractors.*

32 (4) *Report to the Office of Small Business and Disabled Veteran*
33 *Business Enterprise Services regarding any violation of this article.*

34 (e)

35 (e) An awarding department shall not credit toward the
36 department's ~~5-percent goal~~ *goals specified in paragraph (2) of*
37 *subdivision (a) of Section 999.2* state funds expended on a contract
38 with a disabled veteran business enterprise that does not meet and
39 maintain the certification requirements.

40 (d)

1 (f) Upon completion of an awarded contract for which a
 2 commitment to achieve a disabled veteran business enterprise goal
 3 was made, an awarding department shall require the prime
 4 contractor that entered into a subcontract with a disabled veteran
 5 business enterprise to certify to the awarding department all of the
 6 following:

7 (1) The total amount the prime contractor received under the
 8 contract.

9 (2) The name and address of the disabled veteran business
 10 enterprise that participated in the performance of the contract.

11 (3) The amount each disabled veteran business enterprise
 12 received from the prime contractor.

13 (4) That all payments under the contract have been made to the
 14 disabled veteran business enterprise. An awarding department shall
 15 keep that certification on file. A person or entity that knowingly
 16 provides false information shall be subject to a civil penalty for
 17 each violation in the minimum amount of two thousand five
 18 hundred dollars (\$2,500) and the maximum amount of twenty-five
 19 thousand dollars (\$25,000). An action for a civil penalty under this
 20 subdivision may be brought by any public prosecutor in the name
 21 of the people of the State of California and the penalty imposed
 22 shall be enforceable as a civil judgment.

23 (e)

24 (g) A prime contractor may, subject to the approval of the
 25 Department of General Services, replace a disabled veteran
 26 business enterprise identified by the prime contractor in its bid or
 27 offer, pursuant to subdivision (a) of Section 999.10, with another
 28 disabled veteran business enterprise.

29 (f)

30 (h) The administering agency shall adopt rules and regulations;
 31 ~~including standards for good faith efforts,~~ for the purpose of
 32 implementing this section. Emergency regulations consistent with
 33 this section may be adopted.

34 SEC. 6. Section 999.12 of the Military and Veterans Code is
 35 amended to read:

36 999.12. Each awarding department shall appoint an agency
 37 Disabled Veteran Business Enterprise Program Advocate. This
 38 person shall be the same individual appointed pursuant to Section
 39 14846 of the Government Code. The agency Disabled Veteran

1 Business Enterprise Program Advocate shall do all of the
2 following:

3 (a) Assist certified disabled veteran business enterprises in
4 participating in that agency's contracting process.

5 (b) Assist contract officers in seeking disabled veteran business
6 enterprises to participate in the agency's contract and procurement
7 activities by performing outreach efforts to recruit disabled veteran
8 business enterprises to offer their services as either a prime
9 contractor or subcontractor on any contract proposed by the
10 awarding department that requires disabled veteran business
11 enterprise participation, and by other feasible means.

12 (c) Meet regularly with the California Disabled Veteran
13 Business Enterprise Program Advocate and contract and
14 procurement staffs of their departments to disseminate information
15 about the California Disabled Veteran Business Enterprise
16 Program.

17 (d) Serve as an advocate for the disabled veteran business
18 enterprises that are utilized as the agency's contractors or
19 subcontractors.

20 (e) Report to the Office of Small Business and Disabled Veteran
21 Business Enterprise Services regarding any violation of this article.

22 (f) Coordinate and meet, on a regular basis, with the California
23 Disabled Veteran Business Enterprise Program Advocate at the
24 Department of Veterans Affairs in an effort to meet the statewide
25 ~~5-percent goal~~ goals provided for in *paragraph (2) of subdivision*
26 *(a) of Section 999.2.*

27 (g) *Maintain records of the promotional efforts hosted or*
28 *attended by each agency Disabled Veteran Business Enterprise*
29 *Program Advocate, including the name, location, size, and type*
30 *of business attending or participating in an event. The records*
31 *shall also indicate which of these businesses became certified*
32 *disabled veteran business enterprises and participated in a state*
33 *contract as either a prime contractor or as a subcontractor within*
34 *two years following the date of a promotional effort.*

35 SEC. 7. *Section 999.14 is added to the Military and Veterans*
36 *Code, to read:*

37 *999.14. Notwithstanding any other law, contracts awarded by*
38 *any state agency, department, officer, or other state governmental*
39 *entity for goods, services, or information technology for which the*
40 *expected bid could be over one hundred million dollars*

1 (\$100,000,000) shall have a statewide participation goal as
 2 specified in paragraph (2) of subdivision (a) of Section 999.2,
 3 unless the Department of General Services certifies, prior to the
 4 issuance of bid requests, that the state agency, department, officer,
 5 or other state governmental entity met their disabled veteran
 6 business enterprise goal for two out of the three previous fiscal
 7 years, including the prior fiscal year, and will likely meet their
 8 disabled veteran business enterprise goal in the current fiscal year.

9 ~~SEC. 7.~~

10 SEC. 8. Section 1104 of the Military and Veterans Code is
 11 amended to read:

12 1104. (a) Upon appropriation by the Legislature, money in
 13 the fund shall be used by the Department of Veterans Affairs for
 14 the purpose of designing and constructing veterans' homes in
 15 California and completing a comprehensive renovation of the
 16 Veterans' Home at Yountville. Funding from this bond shall be
 17 allocated to fund the state's matching requirement to construct or
 18 renovate those veterans' homes in Section 1011 first, and then
 19 fund any additional homes established under this section. These
 20 homes shall be in addition to sites authorized under Section 1011.

21 (b) Notwithstanding any other ~~provision of law~~, construction
 22 contracts awarded for veterans' homes shall have a statewide
 23 participation goal ~~of not less than 5 percent as specified in~~
 24 ~~paragraph (2) of subdivision (a) of Section 999.2~~ for disabled
 25 veteran business enterprises, as defined in Section 999.

26 SEC. 9. Section 10111 of the Public Contract Code is amended
 27 to read:

28 10111. Commencing January 1, 2007, the department shall
 29 make available a report on contracting activity containing the
 30 following information:

31 (a) A listing of consulting services contracts that the state has
 32 entered into during the previous fiscal year. The listing shall
 33 include the following:

- 34 (1) The name and identification number of each contractor.
- 35 (2) The type of bidding entered into, the number of bidders,
 36 whether the low bidder was accepted, and if the low bidder was
 37 not accepted, an explanation of why another contractor was
 38 selected.
- 39 (3) The amount of the contract price.

1 (4) Whether the contract was a noncompetitive bid contract,
2 and why the contract was a noncompetitive bid contract.

3 (5) Justification for entering into each consulting services
4 contract.

5 (6) The purpose of the contract and the potential beneficiaries.

6 (7) The date when the initial contract was signed, and the date
7 when the work began and was completed.

8 (b) The report shall also include a separate listing of consultant
9 contracts completed during that fiscal year, with the same
10 information specified in subdivision (a).

11 (c) The information specified in subdivisions (a) and (b) shall
12 also include a list of any contracts underway during that fiscal year
13 on which a change was made regarding the following:

14 (1) The completion date of the contract.

15 (2) The amount of money to be received by the contractor, if it
16 exceeds 3 percent of the original contract price.

17 (3) The purpose of the contract or duties of the contractor. A
18 brief explanation shall be given if the change in purpose is
19 significant.

20 (d) The level of participation, by agency, of disabled veteran
21 business enterprises in statewide contracting and shall include
22 dollar values of contract award for the following categories:

23 (1) Construction.

24 (2) Architectural, engineering, and other professional services.

25 (3) Procurement of materials, supplies, and equipment.

26 (4) Information technology procurements.

27 Additionally, the report shall include a statistical summary
28 detailing each awarding department's goal achievement and a
29 statewide total of those goals.

30 (e) The level of participation by small business in state
31 contracting including:

32 (1) Upon request, an up-to-date list of eligible small business
33 bidders by general procurement and construction contract
34 categories, noting company names and addresses and also noting
35 which small businesses also qualify as microbusinesses.

36 (2) By general procurement and construction contract categories,
37 statistics comparing the small business and microbusiness contract
38 participation dollars to the total state contract participation dollars.

39 (3) By awarding department and general procurement and
40 construction categories, statistics comparing the small business

1 and microbusiness contract participation dollars to the total state
2 contract participation dollars.

3 (4) Any recommendations for changes in statutes or state
4 policies to improve opportunities for small businesses and
5 microbusinesses.

6 (5) A statistical summary of small businesses and
7 microbusinesses certified for state contracting by the number of
8 employees at the business for each of the following categories:
9 0–5, 26–50, 51–75, and 76–100.

10 (6) To the extent feasible, beginning in the year 2008, the
11 number of contracts awarded by the department in the categories
12 specified in paragraph (5).

13 (7) The number of contracts and dollar amounts awarded
14 annually pursuant to Section 14838.5 of the Government Code to
15 small businesses, microbusinesses, and disabled veteran business
16 enterprises.

17 (f) The level of participation of business enterprises, by race,
18 ethnicity, and gender of the owner, in contracts to the extent that
19 the information has been voluntarily reported to the department.
20 In addition, the report shall contain the levels of participation of
21 business enterprises, by race, ethnicity, and gender of the owner,
22 and whether the business is a lesbian, gay, bisexual, or transgender
23 owned business for the following categories of contracts, to the
24 extent that the information has been voluntarily reported to the
25 department:

26 (1) Construction.

27 (2) Purchases of materials, supplies, or equipment.

28 (3) Professional services.

29 (g) In the years 2011 and 2012, any errors reported to the
30 department by an awarding agency as required by Sections 10302,
31 10344, and 12104.5, in the previous fiscal year.

32 (h) *For contracting activity occurring on or after July 1, 2015,*
33 *the use of disabled veteran business enterprise utilization plans*
34 *as provided by Section 10115.15. The report shall identify, by*
35 *awarding department, the number and financial value of contracts*
36 *awarded based upon a disabled veteran business enterprise*
37 *utilization plan, the percentage of disabled veteran business*
38 *enterprise work committed to in the utilization plan, the number*
39 *of audits conducted pursuant to subdivision (b) of Section*
40 *10115.15, the number of disapprovals of disabled veteran business*

1 *enterprise utilization plans pursuant to subdivision (c) of Section*
2 *10115.15, and any other enforcement activities relating to disabled*
3 *veteran business enterprise utilization plans during the reporting*
4 *period.*

5 ~~(h)~~

6 (i) The amendments made to this section ~~by the act adding this~~
7 ~~subdivision~~ *by Chapter 861 of the Statutes of 2012* shall apply on
8 and after January 1, 2013.

9 ~~SEC. 8.~~

10 *SEC. 10.* Section 10115 of the Public Contract Code is amended
11 to read:

12 10115. (a) The Legislature finds and declares all of the
13 following:

14 (1) The essence of the American economic system of private
15 enterprise is free competition. Only through full and free
16 competition can free markets, reasonable and just prices, free entry
17 into business, and opportunities for the expression and growth of
18 personal initiative and individual judgment be assured. The
19 preservation and expansion of that competition is basic to the
20 economic well-being of this state and that well-being cannot be
21 realized unless the actual and potential capacity of minority,
22 women, and disabled veteran business enterprises is encouraged
23 and developed. Therefore, it is the declared policy of the state to
24 aid the interests of minority, women, and disabled veteran business
25 enterprises in order to preserve reasonable and just prices and a
26 free competitive enterprise, to ensure that a fair proportion of the
27 total number of contracts or subcontracts for commodities, supplies,
28 technology, property, and services are awarded to minority, women,
29 and disabled veteran business enterprises, and to maintain and
30 strengthen the overall economy of the state.

31 (2) The opportunity for full participation in our free enterprise
32 system by minority, women, and disabled veteran business
33 enterprises is essential if this state is to attain social and economic
34 equality for those businesses and improve the functioning of the
35 state economy.

36 (3) State agencies which have established short- and long-range
37 minority, women, and disabled veteran participation goals are
38 awarding 23 percent or more of their contracts to these business
39 enterprises.

1 (4) It is in the state's interest to expeditiously improve the
2 economically disadvantaged position of minority, women, and
3 disabled veteran business enterprises.

4 (5) The economic position of these businesses can be improved
5 by providing long-range substantial goals for procurement by state
6 agencies of commodities, professional services, and construction
7 work from minority, women, and disabled veteran businesses.

8 (6) Procurement by state agencies of goods and services from
9 these businesses also benefits the state agencies and the citizens
10 of the state by encouraging the expansion of the number of vendors
11 for procurements, thereby encouraging competition among the
12 vendors and promoting economic efficiency in the process.

13 (b) It is the purpose of this article to do all of the following:

14 (1) Encourage greater economic opportunity for minority,
15 women, and disabled veteran business enterprises.

16 (2) Promote competition among state agencies in order to
17 enhance long-term economic efficiency in the procurement of
18 construction, commodities, and professional services contracts.

19 (3) Clarify and expand the program for the procurement by state
20 agencies of commodities, professional services, and construction
21 work from minority, women, and disabled veteran business
22 enterprises.

23 (c) Notwithstanding any other law, contracts awarded by any
24 state agency, department, officer, or other state governmental entity
25 for construction, professional services (except those subject to
26 Chapter 6 (commencing with Section 16850) of Part 3 of Division
27 4 of Title 2 of the Government Code), materials, supplies,
28 equipment, alteration, repair, or improvement shall have statewide
29 participation goals of not less than 15 percent for minority business
30 enterprises, not less than 5 percent for women business enterprises,
31 and ~~5 percent~~ *the percentages specified in paragraph (2) of*
32 *subdivision (a) of Section 999.2 of the Military and Veterans Code*
33 for disabled veteran business enterprises. These goals apply to the
34 overall dollar amount expended each year by the awarding
35 department, as defined by Section 10115.1, pursuant to this article.

36 ~~SEC. 9.~~

37 *SEC. 11.* Section 10115.13 of the Public Contract Code is
38 amended to read:

39 10115.13. Notwithstanding any other law, contracts awarded
40 by any state agency, department, officer, or other state

1 governmental entity for the purchase of general public
2 advertisements shall have statewide participation goals of not less
3 than 15 percent for minority business enterprises, not less than
4 ~~five~~ 5 percent for women business enterprises, and ~~five percent~~
5 *the percentages specified in paragraph (2) of subdivision (a) of*
6 *Section 999.2 of the Military and Veterans Code* for disabled
7 veteran business enterprises. These goals apply to the overall dollar
8 amount expended each year by the awarding state agency,
9 department, offices, or other state governmental entity.

10 ~~SEC. 10.~~

11 *SEC. 12.* Section 10115.15 of the Public Contract Code is
12 amended to read:

13 10115.15. (a) Notwithstanding Section 10115.2, when
14 awarding contracts for materials, supplies, or equipment, including
15 electronic data processing goods and services, an awarding
16 department shall accept the submission by a bidder of a minority,
17 women, and disabled veteran business enterprise utilization plan
18 that has been approved prior to the solicitation due date by the
19 Department of General Services. A business utilization plan shall
20 be considered approved by the Department of General Services as
21 of the date submitted to the department so long as the plan meets
22 the minimum criteria established in paragraphs (1) to (12),
23 inclusive, and shall be valid for a period of one year, unless the
24 department has audited the utilization plan, as authorized under
25 subdivision (b), and disapproves it for reasons specified under
26 subdivision (c). The decision of whether to establish a minority,
27 women, and disabled veteran business enterprise utilization plan
28 shall be at the option of the vendor. If a bidder cites an approved
29 utilization plan in response to the minority, women, and disabled
30 veteran business enterprise participation requirements of a
31 solicitation that calls for 15 percent minority-owned, 5 percent
32 women-owned, and ~~5 percent~~ *the percentages specified in*
33 *paragraph (2) of subdivision (a) of Section 999.2 of the Military*
34 *and Veterans Code* for disabled veteran-owned business
35 participation, then that utilization plan shall be considered
36 responsive to the participation goals of the solicitation document.
37 If a solicitation specifies higher participation goals than those in
38 the bidder's utilization plan, the bidder shall meet the goals in the
39 solicitation. At a minimum, the utilization plan shall include the
40 following information:

- 1 (1) A statement of the vendor’s minority, women, and disabled
2 veteran business enterprise utilization plan, including the primary
3 objectives of the utilization plan.
- 4 (2) An explanation showing sufficient business reasons why
5 the vendor did not meet minority, women, and disabled veteran
6 business enterprise participation goals set forth in the vendor’s
7 minority, women, and disabled veteran business utilization plan
8 submitted to, and approved by, the Department of General Services
9 in the previous year, if applicable. Further, if the vendor did not
10 meet the minority, women, and disabled veteran business
11 participation goals in the previous year, the vendor shall also
12 identify remedial steps it will take to meet the goals in the current
13 utilization plan.
- 14 (3) A statement of the vendor’s minority, women, and disabled
15 veteran business utilization goals for the succeeding year. At a
16 minimum, these utilization goals shall be equal to the statewide
17 participation goals set forth in subdivision (c) of Section 10115.
- 18 (4) Estimated total dollars to be subcontracted by the vendor
19 for sales within the United States for the succeeding year.
- 20 (5) Estimated total dollars to be subcontracted by the vendor
21 for sales within the State of California for the succeeding year.
- 22 (6) Total dollars expressed as a percentage of the amount
23 estimated pursuant to paragraph (4), intended to be subcontracted
24 with each of the following:
 - 25 (A) Minority business enterprises.
 - 26 (B) Women business enterprises.
- 27 (7) Total dollars, expressed as a percentage of the amount
28 estimated pursuant to paragraph (5), intended to be subcontracted
29 with disabled veteran-owned business enterprises.
- 30 (8) A representative listing of the products and services that the
31 vendor anticipates subcontracting, including an identification of
32 the types of subcontracting planned for minority, women, and
33 disabled veteran business enterprises.
- 34 (9) The name of the individual employed by the vendor who
35 will administer the vendor’s utilization plan, including a description
36 of the duties of the individual.
- 37 (10) A description of the efforts that the vendor will undertake
38 to ensure that minority, women, and disabled veteran business
39 enterprises will have an equitable opportunity to compete for
40 contracts.

1 (11) A listing of the records and reports that the vendor will
2 maintain to demonstrate the practices and procedures that have
3 been adopted to comply with the requirements and goals of the
4 utilization plan.

5 (12) Affirmation that the vendor met the statewide minority,
6 women, and disabled veteran business enterprise utilization goals
7 for the previous year, if applicable.

8 (b) The Department of General Services shall conduct random
9 audits of the submitted utilization plans to determine compliance
10 with this article, and shall retain on file all submitted utilization
11 plans for auditing purposes. During any audit of a submitted
12 utilization plan, the Department of General Services may ask a
13 vendor to submit a list of all the minority, women, and disabled
14 veteran business enterprises included as subcontractors in the
15 vendor's plan for the previous year. This information shall remain
16 confidential. Nothing in this section shall be construed to require
17 the Department of General Services to audit all of the minority,
18 women, and disabled veteran business enterprise utilization plans
19 submitted by individual vendors. The Department of General
20 Services may establish appropriate fees to cover the actual costs
21 of conducting random audits and retaining on file all submitted
22 plans.

23 (c) (1) At any time, the Department of General Services may
24 disapprove a vendor's minority, women, and disabled veteran
25 business enterprise utilization plan for any of the following reasons:

26 (A) The utilization plan fails to evidence a vendor's intention
27 to comply fully with the statewide minority, women, and disabled
28 veteran business enterprise goals for the succeeding year, as
29 indicated by failure of the utilization plan to contain the information
30 specified in subdivision (a).

31 (B) The utilization plan fails to evidence sufficient business
32 reasons for failure to achieve the minority, women, and disabled
33 veteran business enterprise goals set forth in a utilization plan
34 submitted in the previous year, if applicable.

35 (C) The utilization plan fails to evidence sufficient remedial
36 steps the vendor will take if the vendor did not meet the minority,
37 women, and disabled veteran business participation goals in the
38 previous year, if applicable.

39 (2) If a vendor's utilization plan is disapproved, the vendor may
40 not submit a new utilization plan to the department for a period of

1 one year from the date of disapproval. Prior to disapproval of a
2 vendor's utilization plan, the vendor shall be entitled to a public
3 hearing and to five days' notice of the time and place thereof. The
4 notice shall state the reasons for the hearing.

5 (3) A vendor that submits a minority, women, and disabled
6 veteran business utilization plan that is approved by the Department
7 of General Services, and that is subsequently awarded a contract
8 to which the vendor would not otherwise have been entitled, and
9 who fails to evidence intention to fully comply with the minority,
10 women, and disabled veteran business enterprise goals in the
11 utilization plan, or fails to evidence sufficient business reasons for
12 failing to achieve the minority, women, and disabled veteran
13 business enterprise goals set forth in the utilization plan, shall:

14 (A) Pay to the state any difference between the contract amount
15 and what the state's cost would have been if the contract had been
16 properly awarded.

17 (B) In addition to the amount specified in subparagraph (A), be
18 assessed a penalty in an amount of not more than 10 percent of
19 the amount of the contract involved.

20 (C) Be ineligible to transact any business with the state for a
21 period of not less than three months and not more than 24 months.

22 Prior to imposition of any sanction under this chapter, the
23 contractor or vendor shall be entitled to a public hearing and to
24 five days' notice of the time and place thereof. The notice shall
25 state the reasons for the hearing.

26 *(d) The Department of General Services shall not approve a*
27 *vendor's utilization plan unless the vendor agrees to provide the*
28 *department with any information the department deems necessary*
29 *to meet the reporting requirements set forth in subdivision (h) of*
30 *Section 10111.*