

ASSEMBLY BILL

No. 1218

**Introduced by Assembly Member Weber
(Principal coauthor: Assembly Member Eduardo Garcia)**

February 27, 2015

An act to amend Sections 999.1, 999.2, 999.5, and 999.12 of the Military and Veterans Code, and to amend Section 10111 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1218, as introduced, Weber. Public contracts: disabled veteran business enterprise.

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. The administering agency for the California Disabled Veteran Business Enterprise Program is the Department of General Services. Existing law requires the Director of General Services to adopt written policies and guidelines establishing a uniform process for state contracting that provides a disabled veteran business enterprise participation incentive to bidders.

This bill would require a greater participation incentive to be provided to a prime contractor who owns a disabled veteran business enterprise, as specified.

Existing law requires the Department of Veterans Affairs to maintain complete records of its promotional efforts to promote the program and to establish a system to track the effectiveness of its promotional efforts.

This bill would require the department to maintain additional information relating to its promotional efforts, as specified.

Existing law requires a prime contractor who entered into a subcontract with a disabled veteran business enterprise to make certain disclosures to the awarding department after completion of the contract.

This bill would require the awarding department that receives this information to maintain those records for a minimum of 5 years, as specified. The bill would require every awarding department to establish a procedure to ensure the accuracy and completeness of those records.

Existing law requires each awarding department to appoint an agency Disabled Veteran Business Enterprise Program Advocate. Existing law requires the agency Disabled Veteran Business Enterprise Program Advocate to, among other things, assist certified disabled veteran business enterprises in participating in that agency's contracting process.

This bill would additionally require the advocate to maintain records of the promotional efforts hosted or attended by the advocate, as specified.

Existing law requires a department, as defined under the State Contract Act, to report on contracting activity containing specified information.

This bill would require a department, as defined, to establish guidelines for reporting multiyear contracts. The bill would make other minor, technical changes to the reporting requirements under the program.

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

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

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

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

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

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

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

999.2. (a) Notwithstanding any other ~~provision~~ of law, contracts awarded by any state agency, department, officer, or other state governmental entity, including school districts when they are expending state funds for construction, professional services (except those subject to Chapter 6 (commencing with Section 16850) of Part 3 of Division 4 of Title 2 of the Government Code), materials, supplies, equipment, alteration, repair, or improvement shall have statewide participation goals of not less than 3 percent for disabled veteran business enterprises. These goals apply to the overall dollar amount *awarded and* expended each year by the awarding department.

(b) For purposes of this section:

(1) "Broker" or "agent" means any individual or entity, or any combination thereof, that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more certified disabled veterans has 51 percent ownership of the quantity and

1 value of the materials, supplies, services, and of each piece of
2 equipment provided under the contract.

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

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

9 (c) A disabled veteran business enterprise that rents equipment
10 to an awarding department shall be deemed to be an equipment
11 broker unless one or more disabled veterans has 51-percent
12 ownership of the quantity and the value of each piece of equipment.
13 If the equipment is owned by one or more disabled veterans, each
14 disabled veteran owner shall, prior to performance under any
15 contract, submit to the awarding department a declaration signed
16 by the disabled veteran owner stating that the owner is a disabled
17 veteran and providing the name, address, telephone number, and
18 tax identification number of the disabled veteran owner. Each
19 disabled veteran owner shall submit his or her federal income tax
20 returns to the administering agency pursuant to subdivision (g) as
21 if he or she were a disabled veteran business enterprise. The
22 disabled veteran business enterprise of a disabled veteran owner
23 who fails to submit his or her tax returns will be deemed to be an
24 equipment broker.

25 (d) A disabled veteran business enterprise that rents equipment
26 to an awarding department shall, prior to performing the contract,
27 submit to the awarding department a declaration signed by each
28 disabled veteran owner and manager of the enterprise stating that
29 the enterprise obtained the contract by representing that the
30 enterprise was a disabled veteran business enterprise meeting and
31 maintaining all of the requirements of a disabled veteran business
32 enterprise. The declaration shall include the name, address,
33 telephone number, and tax identification number of the owner of
34 each piece of equipment identified in the contract.

35 (e) State funds expended for equipment rented from equipment
36 brokers pursuant to contracts awarded under this section shall not
37 be credited toward the 3-percent goal.

38 (f) A disabled veteran business enterprise that is a broker or
39 agent and that obtains a contract pursuant to subdivision (a) shall,
40 prior to performing the contract, disclose to the awarding

1 department that the business is a broker or agent. The disclosure
2 shall be made in a declaration signed and executed by each disabled
3 veteran owner and manager of the enterprise, declaring that the
4 enterprise is a broker or agent, and identifying the name, address,
5 and telephone number of the principal for whom the enterprise is
6 acting as a broker or agent.

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

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

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

22 (4) A disabled veteran business enterprise that fails to comply
23 with any provision of this subdivision shall be prohibited from
24 participating in any state contract until the disabled veteran
25 business enterprise complies with the provisions of this subdivision.
26 Funds expended involving a disabled veteran business enterprise
27 during any period in which that enterprise is not in compliance
28 with the provisions of this subdivision shall not be credited toward
29 the awarding department's 3-percent goal.

30 (h) A disabled veteran business enterprise that fails to maintain
31 the certification requirements set forth in this article shall
32 immediately notify the awarding department and the administering
33 agency of that failure by filing a notice of failure that states with
34 particularity each requirement the disabled veteran business
35 enterprise has failed to maintain.

36 SEC. 3. Section 999.5 of the Military and Veterans Code is
37 amended to read:

38 999.5. (a) The administering agency for the California Disabled
39 Veteran Business Enterprise Program is the Department of General
40 Services, except in the case of contracts for professional bond

1 services. The Department of General Services shall consult with
2 the California Disabled Veteran Business Enterprise Program
3 Advocate, appointed by the Secretary of the Department of
4 Veterans Affairs pursuant to Section 999.11, on all matters relating
5 to the California Disabled Veteran Business Enterprise Program.
6 The

7 (b) The Director of General Services shall adopt written policies
8 and guidelines establishing a uniform process for state contracting
9 that would provide a disabled veteran business enterprise
10 participation incentive to bidders. *Pursuant to that process, a*
11 *greater participation incentive shall be provided to a prime*
12 *contractor who owns a disabled veteran business enterprise rather*
13 *than to a prime contractor who commits to entering into*
14 *subcontracts with disabled veteran business enterprises.* The
15 incentive program shall be used by all state agencies when
16 awarding contracts.

17 (b)

18 (c) The Department of Veterans Affairs shall do all of the
19 following:

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

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

24 (3) Maintain complete records of its promotional efforts,
25 *including a list that identifies the name, location, number, and*
26 *type of businesses by size and industry sector attending or*
27 *participating in a promotional effort.*

28 (4) Establish a system to track the effectiveness of its efforts to
29 promote the California Disabled Veteran Business Enterprise
30 Program, ~~which shall include regular, periodic surveys of newly~~
31 ~~certified disabled veteran business enterprises to determine how~~
32 ~~they learned of the program, why they became certified, and what~~
33 ~~their experience with awarding departments has been.~~ *shall, at a*
34 *minimum, include an annual comparison of the list of businesses*
35 *participating in promotional efforts during the current and prior*
36 *two years with the list of those businesses that become newly*
37 *certified as disabled veteran business enterprises and those*
38 *businesses that become a prime contractor or subcontractor with*
39 *the state under the program. The result of the annual comparison*

1 *shall be one performance measure as to the success of the*
2 *promotional activities.*

3 ~~(e)~~

4 *(d)* An awarding department shall not credit toward the
5 department's 3-percent goal state funds expended on a contract
6 with a disabled veteran business enterprise that does not meet and
7 maintain the certification requirements.

8 ~~(d)~~

9 *(e)* Upon completion of an awarded contract for which a
10 commitment to achieve a disabled veteran business enterprise goal
11 was made, an awarding department shall require the prime
12 contractor that entered into a subcontract with a disabled veteran
13 business enterprise to certify to the awarding department all of the
14 following:

15 (1) The total amount the prime contractor received under the
16 contract.

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

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

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

31 *(f)* An awarding department shall maintain records of the
32 information provided by the prime contractor pursuant to
33 subdivision (e), including, but not limited to, the name of the prime
34 contractor and subcontractors under subdivision (e) and the
35 amount awarded to, and the amount paid to, each prime contractor
36 and subcontractor under subdivision (e). Awarding departments
37 shall establish review procedures to ensure the accuracy and
38 completeness of the award amounts and the paid amounts reported.

39 ~~(e)~~

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

~~(f)~~

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

(i) The records collected and maintained pursuant to subdivision (f) shall be retained for a minimum of five years after collection.

SEC. 4. Section 999.12 of the Military and Veterans Code is amended to read:

999.12. Each awarding department shall appoint an agency Disabled Veteran Business Enterprise Program Advocate. This person shall be the same individual appointed pursuant to Section 14846 of the Government Code. The agency Disabled Veteran Business Enterprise Program Advocate shall do all of the following:

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

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

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

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

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

(f) Coordinate and meet, on a regular basis, with the California Disabled Veteran Business Enterprise Program Advocate at the Department of Veterans Affairs in an effort to meet the statewide 3-percent goal provided for in Section 999.2.

(g) *Maintain records of the promotional efforts hosted by, or attended by, the advocate, including, but not limited to, a list that identifies the name, location, number, and type of businesses by size and industry sector attending or participating in an event. The record shall also indicate any specific outcomes from the promotional event, including, but not limited to, the number of disabled veteran business enterprises who were certified and which disabled veteran business enterprises entered in a state contract as either a prime contractor or subcontractor for a contract awarded by his or her agency within the two years following the promotional efforts hosted or attended by the advocate.*

SEC. 5. Section 10111 of the Public Contract Code is amended to read:

10111. Commencing January 1, 2007, the department shall make available a report on contracting activity containing the following information *in subdivisions (a) to (f), inclusive*:

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

(1) The name and identification number of each contractor.

(2) The type of bidding entered into, the number of bidders, whether the low bidder was accepted, and if the low bidder was not accepted, an explanation of why another contractor was selected.

(3) The amount of the contract price.

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

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

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

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

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

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

(1) The completion date of the contract.

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

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

(d) The level of participation, by agency, of disabled veteran business enterprises *as a prime contractor or a subcontractor* in statewide contracting and ~~shall include the dollar values of contract award and the amount of the contract paid~~ for the following categories:

(1) Construction.

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

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

(4) Information technology procurements.

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

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

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

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

(3) By awarding department and general procurement and construction categories, statistics comparing the small business and microbusiness contract participation dollars to the total state contract participation dollars.

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

(5) A statistical summary of small businesses and microbusinesses certified for state contracting by the number of

1 employees at the business for each of the following categories:
2 0–5, 26–50, 51–75, and 76–100.

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

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

10 (f) The level of participation of business enterprises, by race,
11 ethnicity, and gender of the owner, in contracts to the extent that
12 the information has been voluntarily reported to the department.
13 In addition, the report shall contain the levels of participation of
14 business enterprises, by race, ethnicity, and gender of the owner,
15 and whether the business is a lesbian, gay, bisexual, or transgender
16 owned business for the following categories of contracts, to the
17 extent that the information has been voluntarily reported to the
18 department:

19 (1) Construction.

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

21 (3) Professional services.

22 ~~(g) In the years 2011 and 2012, any errors reported to the~~
23 ~~department by an awarding agency as required by Sections 10302,~~
24 ~~10344, and 12104.5, in the previous fiscal year.~~

25 ~~(h) The amendments made to this section by the act adding this~~
26 ~~subdivision shall apply on and after January 1, 2013.~~

27 (g) *The department shall establish guidelines for reporting*
28 *multiyear contracts.*