

AMENDED IN SENATE JULY 7, 2015  
AMENDED IN ASSEMBLY APRIL 23, 2015  
AMENDED IN ASSEMBLY APRIL 14, 2015  
CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1218**

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**Introduced by Assembly Member Weber**  
**(Principal coauthor: Assembly Member Eduardo Garcia)**  
*(Principal coauthor: Senator Nielsen)*  
*(Coauthor: Assembly Member Kim)*

February 27, 2015

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An act to amend Sections 999.1, 999.2, 999.5, and 999.12 ~~of of, and~~ *to add Section 999.4 to*, 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 amended, 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, *and has not previously entered into any contracts with the state as a prime contractor*, and to a disabled veteran business enterprise that employs a workforce that is more than 50% veterans or that has not previously entered into any contracts with the state. *The bill would require an awarding department to consider whether greater disabled veteran business enterprise participation in excess of 3% should be required on its contracts.*

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. *The bill would further require a contractor who subcontracts with disabled veteran business enterprises to comply with additional requirements when providing its certification of expenditures to an awarding department, as specified.*

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 law, each awarding  
4 department shall have annual statewide participation goals of not  
5 less than 3 percent for disabled veteran business enterprises for  
6 contracts entered into by the awarding department during the year  
7 for professional bond services. This section shall not apply if a  
8 contract for professional bond services of an underwriter is to be  
9 obtained by competitive bid. However, each awarding department  
10 shall establish goals for contracts to be obtained by competitive  
11 bid for professional bond services.  
12 (2) These goals shall apply to the overall dollar amount ~~awarded~~  
13 ~~and~~ expended by the awarding department with respect to the  
14 contracts for professional bond services relating to the issuance of  
15 bonds by the awarding department, including amounts spent as  
16 underwriter's discounts.  
17 (b) In attempting to meet the goals set forth in subdivision (a),  
18 the awarding department shall consider establishing cocounsel,  
19 joint venture, and subcontracting relationships, including disabled  
20 veteran business enterprises, in all contracts for professional bond  
21 services. It shall be the responsibility of the head of each awarding  
22 department to be supportive of the Treasurer's program for  
23 assigning representative portions of professional bond services  
24 contracts for purposes of meeting the goals established pursuant  
25 to this section. However, nothing in this article shall preclude the  
26 awarding department from achieving the goals set forth in this  
27 section without requiring joint ventures, cocounsel, or  
28 subcontracting arrangements.  
29 (c) This section shall not limit the ability of any awarding  
30 department to meet a goal higher than those set forth in subdivision  
31 (a) for the participation of disabled veteran business enterprises  
32 in contracts awarded by the awarding department.  
33 (d) *In order to meet the 3-percent annual goal set forth in*  
34 *paragraph (1) of subdivision (a), an awarding department shall*  
35 *consider whether greater disabled veteran business enterprise*

1 *participation in excess of 3 percent should actually be required*  
 2 *on contracts entered into pursuant to this section for professional*  
 3 *bond services.*

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

6 999.2. (a) Notwithstanding any other law, contracts awarded  
 7 by any state agency, department, officer, or other state  
 8 governmental entity, including school districts when they are  
 9 expending state funds for construction, professional services  
 10 (except those subject to Chapter 6 (commencing with Section  
 11 16850) of Part 3 of Division 4 of Title 2 of the Government Code),  
 12 materials, supplies, equipment, alteration, repair, or improvement  
 13 shall have statewide participation goals of not less than 3 percent  
 14 for disabled veteran business enterprises. These goals apply to the  
 15 overall dollar amount ~~awarded and~~ expended each year by the  
 16 awarding department.

17 (b) For purposes of this section:

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

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

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

31 (c) A disabled veteran business enterprise that rents equipment  
 32 to an awarding department shall be deemed to be an equipment  
 33 broker unless one or more disabled veterans has 51-percent  
 34 ownership of the quantity and the value of each piece of equipment.  
 35 If the equipment is owned by one or more disabled veterans, each  
 36 disabled veteran owner shall, prior to performance under any  
 37 contract, submit to the awarding department a declaration signed  
 38 by the disabled veteran owner stating that the owner is a disabled  
 39 veteran and providing the name, address, telephone number, and  
 40 tax identification number of the disabled veteran owner. Each

1 disabled veteran owner shall submit his or her federal income tax  
2 returns to the administering agency pursuant to subdivision (g) as  
3 if he or she were a disabled veteran business enterprise. The  
4 disabled veteran business enterprise of a disabled veteran owner  
5 who fails to submit his or her tax returns will be deemed to be an  
6 equipment broker.

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

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

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

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

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

38 (3) A disabled veteran business enterprise that, and each owner  
39 thereof who, has not submitted to the administering agency  
40 complete copies of the enterprise's federal income tax returns for

1 the three tax years preceding certification nor for each  
2 postcertification tax year for which a return was required to be  
3 filed, shall have 90 days to submit those returns.

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

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

18 (i) *In order to meet the 3-percent annual goal set forth in*  
19 *subdivision (a), an awarding department shall consider whether*  
20 *greater disabled veteran business enterprise participation in excess*  
21 *of 3 percent should actually be required on contracts entered into*  
22 *pursuant to this section for goods and services.*

23 SEC. 3. *Section 999.4 is added to the Military and Veterans*  
24 *Code, to read:*

25 999.4. *A contractor that is not a disabled veteran business*  
26 *enterprise that subcontracts with disabled veteran business*  
27 *enterprises pursuant to this article shall, when submitting its*  
28 *certification of expenditures to the awarding department, comply*  
29 *with either of the following:*

30 (a) *Provide on the certification of expenditures to the awarding*  
31 *department, the signature of any disabled veteran business*  
32 *enterprise that performed work for the contractor acknowledging*  
33 *the authenticity of the expenditures.*

34 (b) *Provide the certification of expenditures to any disabled*  
35 *veteran business enterprise that performed work for the contractor*  
36 *and proof of any amount of expenditures provided to that*  
37 *subcontractor, such as by providing copies of checks issued to the*  
38 *subcontractor or wire transfer notices.*

1     ~~SEC. 3.~~

2     SEC. 4. Section 999.5 of the Military and Veterans Code is  
3 amended to read:

4     999.5. (a) The administering agency for the California Disabled  
5 Veteran Business Enterprise Program is the Department of General  
6 Services, except in the case of contracts for professional bond  
7 services. The Department of General Services shall consult with  
8 the California Disabled Veteran Business Enterprise Program  
9 Advocate, appointed by the Secretary of the Department of  
10 Veterans Affairs pursuant to Section 999.11, on all matters relating  
11 to the California Disabled Veteran Business Enterprise Program.

12     (b) (1) The Director of General Services shall adopt written  
13 policies and guidelines establishing a uniform process for state  
14 contracting that would provide a disabled veteran business  
15 enterprise participation incentive to bidders. Pursuant to that  
16 process, a greater participation incentive shall be provided to the  
17 following:

18     (A) A prime contractor who owns a disabled veteran business  
19 enterprise *and who has not previously entered into any contracts*  
20 *with the state as a prime contractor*, rather than to a prime  
21 contractor who commits to entering into subcontracts with disabled  
22 veteran business enterprises.

23     (B) A disabled veteran business enterprise that employs a  
24 workforce that is more than 50 percent veterans.

25     (C) A disabled veteran business enterprise that has not  
26 previously entered into any contracts with the state.

27     (2) The incentive program shall be used by all state agencies  
28 when awarding contracts.

29     (c) The Department of Veterans Affairs shall do all of the  
30 following:

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

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

35     (3) Maintain complete records of its promotional efforts,  
36 including a list that identifies the name, location, number, and type  
37 of businesses by size and industry sector attending or participating  
38 in a promotional effort.

39     (4) Establish a system to track the effectiveness of its efforts to  
40 promote the California Disabled Veteran Business Enterprise

1 Program, which shall, at a minimum, include an annual comparison  
2 of the list of businesses participating in promotional efforts during  
3 the current and prior two years with the list of those businesses  
4 that become newly certified as disabled veteran business enterprises  
5 and those businesses that become a prime contractor or  
6 subcontractor with the state under the program. The result of the  
7 annual comparison shall be one performance measure as to the  
8 success of the promotional activities.

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

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

19 (1) The total amount the prime contractor received under the  
20 contract.

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

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

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

35 (f) An awarding department shall maintain records of the  
36 information provided by the prime contractor pursuant to  
37 subdivision (e), including, but not limited to, the name of the prime  
38 contractor and subcontractors under subdivision (e) and the amount  
39 awarded to, and the amount paid to, each prime contractor and  
40 subcontractor under subdivision (e). Awarding departments shall

1 establish review procedures to ensure the accuracy and  
2 completeness of the award amounts and the paid amounts reported.

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

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

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

14 ~~SEC. 4.~~

15 *SEC. 5.* Section 999.12 of the Military and Veterans Code is  
16 amended to read:

17 999.12. Each awarding department shall appoint an agency  
18 Disabled Veteran Business Enterprise Program Advocate. This  
19 person shall be the same individual appointed pursuant to Section  
20 14846 of the Government Code. The agency Disabled Veteran  
21 Business Enterprise Program Advocate shall do all of the  
22 following:

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

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

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

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

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

3 (f) Coordinate and meet, on a regular basis, with the California  
4 Disabled Veteran Business Enterprise Program Advocate at the  
5 Department of Veterans Affairs in an effort to meet the statewide  
6 3-percent goal provided for in Section 999.2.

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

18 ~~SEC. 5.~~

19 *SEC. 6.* Section 10111 of the Public Contract Code is amended  
20 to read:

21 10111. Commencing January 1, 2007, the department shall  
22 make available a report on contracting activity containing the  
23 information in subdivisions (a) to (f), inclusive:

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

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

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

32 (3) The amount of the contract price.

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

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

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

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

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

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

7 (1) The completion date of the contract.

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

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

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

17 (1) Construction.

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

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

20 (4) Information technology procurements.

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

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

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

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

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

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

1 (5) A statistical summary of small businesses and  
2 microbusinesses certified for state contracting by the number of  
3 employees at the business for each of the following categories:  
4 0–5, 26–50, 51–75, and 76–100.

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

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

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

- 21 (1) Construction.
  - 22 (2) Purchases of materials, supplies, or equipment.
  - 23 (3) Professional services.
- 24 (g) The department shall establish guidelines for reporting  
25 multiyear contracts.

O