

ASSEMBLY BILL

No. 1302

Introduced by Assembly Member Brown

February 27, 2015

An act to amend Sections 999, 999.1, 999.2, 999.5, 999.12, and 1104 of the Military and Veterans Code, and to amend Sections 10115, 10115.13, and 10115.15 of the Public Contract Code, relating to disabled veterans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1302, as introduced, Brown. Public Contracts: disabled veterans.

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 bill would increase that participation goal to 5%.

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 of the Military and Veterans Code
2 is amended to read:
3 999. (a) This article shall be known as, and may be cited as,
4 the California Disabled Veteran Business Enterprise Program. The
5 California Disabled Veteran Business Enterprise Program is
6 established to address the special needs of disabled veterans
7 seeking rehabilitation and training through entrepreneurship and
8 to recognize the sacrifices of Californians disabled during military

1 service. It is the intent of the Legislature that every state
2 procurement authority honor California’s disabled veterans by
3 taking all practical actions necessary to meet or exceed the disabled
4 veteran business enterprise participation goal of a minimum of 3
5 5 percent of total contract value.

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

7 (1) “Administering agency” means the Treasurer in the case of
8 contracts for professional bond services, and the Department of
9 General Services’ Office of Small Business and Disabled Veteran
10 Business Enterprise Services, in the case of contracts governed by
11 Section 999.2.

12 (2) “Awarding department” means a state agency, department,
13 governmental entity, or other officer or entity empowered by law
14 to issue bonds or enter into contracts on behalf of the state.

15 (3) “Bonds” means bonds, notes, warrants, certificates of
16 participation, and other evidences of indebtedness issued by, or
17 on behalf of, the state.

18 (4) “Contract” includes any agreement or joint agreement to
19 provide professional bond services to the State of California or an
20 awarding department. “Contract” also includes any agreement or
21 joint development agreement to provide labor, services, materials,
22 supplies, or equipment in the performance of a contract, franchise,
23 concession, or lease granted, let, or awarded for, and on behalf of,
24 the state.

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

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

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

3 (I) Is responsible for the execution of a distinct element of the
4 work of the contract.

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

7 (III) Performs work that is normal for its business services and
8 functions.

9 (IV) Is responsible, with respect to products, inventories,
10 materials, and supplies required for the contract, for negotiating
11 price, determining quality and quantity, ordering, installing, if
12 applicable, and making payment.

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

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

22 (6) “Disabled veteran” means a veteran of the military, naval,
23 or air service of the United States, including, but not limited to,
24 the Philippine Commonwealth Army, the Regular Scouts, “Old
25 Scouts,” and the Special Philippine Scouts, “New Scouts,” who
26 has at least a 10-percent service-connected disability and who is
27 domiciled in the state.

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

31 (i) It is a sole proprietorship at least 51 percent owned by one
32 or more disabled veterans or, in the case of a publicly owned
33 business, at least 51 percent of its stock is unconditionally owned
34 by one or more disabled veterans; a subsidiary that is wholly owned
35 by a parent corporation, but only if at least 51 percent of the voting
36 stock of the parent corporation is unconditionally owned by one
37 or more disabled veterans; or a joint venture in which at least 51
38 percent of the joint venture’s management, control, and earnings
39 are held by one or more disabled veterans.

1 (ii) The management and control of the daily business operations
2 are by one or more disabled veterans. The disabled veterans who
3 exercise management and control are not required to be the same
4 disabled veterans as the owners of the business.

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

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

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

24 (9) “Goal” means a numerically expressed objective that
25 awarding departments and contractors are required to make efforts
26 to achieve.

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

29 (11) “Professional bond services” include services as financial
30 advisers, bond counsel, underwriters in negotiated transactions,
31 underwriter’s counsel, financial printers, feasibility consultants,
32 and other professional services related to the issuance and sale of
33 bonds.

34 SEC. 2. Section 999.1 of the Military and Veterans Code is
35 amended to read:

36 999.1. (a) (1) Notwithstanding any other provision of law,
37 each awarding department shall have annual statewide participation
38 goals of not less than ~~3~~ 5 percent for disabled veteran business
39 enterprises for contracts entered into by the awarding department
40 during the year for professional bond services. This section shall

1 not apply if a contract for professional bond services of an
2 underwriter is to be obtained by competitive bid. However, each
3 awarding department shall establish goals for contracts to be
4 obtained by competitive bid for professional bond services.

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

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

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

26 SEC. 3. Section 999.2 of the Military and Veterans Code is
27 amended to read:

28 999.2. (a) Notwithstanding any other provision of law,
29 contracts awarded by any state agency, department, officer, or
30 other state governmental entity, including school districts when
31 they are expending state funds for construction, professional
32 services (except those subject to Chapter 6 (commencing with
33 Section 16850) of Part 3 of Division 4 of Title 2 of the Government
34 Code), materials, supplies, equipment, alteration, repair, or
35 improvement shall have statewide participation goals of not less
36 than ~~3~~ 5 percent for disabled veteran business enterprises. These
37 goals apply to the overall dollar amount expended each year by
38 the awarding department.

39 (b) For purposes of this section:

1 (1) “Broker” or “agent” means any individual or entity, or any
2 combination thereof, that does not have title, possession, control,
3 and risk of loss of materials, supplies, services, or equipment
4 provided to an awarding department, unless one or more certified
5 disabled veterans has 51 percent ownership of the quantity and
6 value of the materials, supplies, services, and of each piece of
7 equipment provided under the contract.

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

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

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

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

1 (e) State funds expended for equipment rented from equipment
2 brokers pursuant to contracts awarded under this section shall not
3 be credited toward the ~~3-percent~~ *5-percent* goal.

4 (f) A disabled veteran business enterprise that is a broker or
5 agent and that obtains a contract pursuant to subdivision (a) shall,
6 prior to performing the contract, disclose to the awarding
7 department that the business is a broker or agent. The disclosure
8 shall be made in a declaration signed and executed by each disabled
9 veteran owner and manager of the enterprise, declaring that the
10 enterprise is a broker or agent, and identifying the name, address,
11 and telephone number of the principal for whom the enterprise is
12 acting as a broker or agent.

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

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

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

28 (4) A disabled veteran business enterprise that fails to comply
29 with any provision of this subdivision shall be prohibited from
30 participating in any state contract until the disabled veteran
31 business enterprise complies with the provisions of this subdivision.
32 Funds expended involving a disabled veteran business enterprise
33 during any period in which that enterprise is not in compliance
34 with the provisions of this subdivision shall not be credited toward
35 the awarding department's ~~3-percent~~ *5-percent* goal.

36 (h) A disabled veteran business enterprise that fails to maintain
37 the certification requirements set forth in this article shall
38 immediately notify the awarding department and the administering
39 agency of that failure by filing a notice of failure that states with

1 particularity each requirement the disabled veteran business
2 enterprise has failed to maintain.

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

5 999.5. (a) The administering agency for the California Disabled
6 Veteran Business Enterprise Program is the Department of General
7 Services, except in the case of contracts for professional bond
8 services. The Department of General Services shall consult with
9 the California Disabled Veteran Business Enterprise Program
10 Advocate, appointed by the Secretary of the Department of
11 Veterans Affairs pursuant to Section 999.11, on all matters relating
12 to the California Disabled Veteran Business Enterprise Program.
13 The Director of General Services shall adopt written policies and
14 guidelines establishing a uniform process for state contracting that
15 would provide a disabled veteran business enterprise participation
16 incentive to bidders. The incentive program shall be used by all
17 state agencies when awarding contracts.

18 (b) 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 (4) Establish a system to track the effectiveness of its efforts to
26 promote the California Disabled Veteran Business Enterprise
27 Program, which shall include regular, periodic surveys of newly
28 certified disabled veteran business enterprises to determine how
29 they learned of the program, why they became certified, and what
30 their experience with awarding departments has been.

31 (c) An awarding department shall not credit toward the
32 department's ~~3-percent~~ *5-percent* goal state funds expended on a
33 contract with a disabled veteran business enterprise that does not
34 meet and maintain the certification requirements.

35 (d) Upon completion of an awarded contract for which a
36 commitment to achieve a disabled veteran business enterprise goal
37 was made, an awarding department shall require the prime
38 contractor that entered into a subcontract with a disabled veteran
39 business enterprise to certify to the awarding department all of the
40 following:

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

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

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

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

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

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

26 SEC. 5. Section 999.12 of the Military and Veterans Code is
27 amended to read:

28 999.12. Each awarding department shall appoint an agency
29 Disabled Veteran Business Enterprise Program Advocate. This
30 person shall be the same individual appointed pursuant to Section
31 14846 of the Government Code. The agency Disabled Veteran
32 Business Enterprise Program Advocate shall do all of the
33 following:

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

36 (b) Assist contract officers in seeking disabled veteran business
37 enterprises to participate in the agency's contract and procurement
38 activities by performing outreach efforts to recruit disabled veteran
39 business enterprises to offer their services as either a prime
40 contractor or subcontractor on any contract proposed by the

1 awarding department that requires disabled veteran business
2 enterprise participation, and by other feasible means.

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

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

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

13 (f) Coordinate and meet, on a regular basis, with the California
14 Disabled Veteran Business Enterprise Program Advocate at the
15 Department of Veterans Affairs in an effort to meet the statewide
16 ~~3-percent~~ 5-percent goal provided for in Section 999.2.

17 SEC. 6. Section 1104 of the Military and Veterans Code is
18 amended to read:

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

28 (b) Notwithstanding any other provision of law, construction
29 contracts awarded for veterans’ homes shall have a statewide
30 participation goal of not less than ~~3-percent~~ 5 percent for disabled
31 veteran business enterprises, as defined in ~~subdivision (g)~~ of
32 Section 999.

33 SEC. 7. Section 10115 of the Public Contract Code is amended
34 to read:

35 10115. (a) The Legislature finds and declares all of the
36 following:

37 (1) The essence of the American economic system of private
38 enterprise is free competition. Only through full and free
39 competition can free markets, reasonable and just prices, free entry
40 into business, and opportunities for the expression and growth of

1 personal initiative and individual judgment be assured. The
2 preservation and expansion of that competition is basic to the
3 economic well-being of this state and that well-being cannot be
4 realized unless the actual and potential capacity of minority,
5 women, and disabled veteran business enterprises is encouraged
6 and developed. Therefore, it is the declared policy of the state to
7 aid the interests of minority, women, and disabled veteran business
8 enterprises in order to preserve reasonable and just prices and a
9 free competitive enterprise, to ensure that a fair proportion of the
10 total number of contracts or subcontracts for commodities, supplies,
11 technology, property, and services are awarded to minority, women,
12 and disabled veteran business enterprises, and to maintain and
13 strengthen the overall economy of the state.

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

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

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

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

30 (6) Procurement by state agencies of goods and services from
31 these businesses also benefits the state agencies and the citizens
32 of the state by encouraging the expansion of the number of vendors
33 for procurements, thereby encouraging competition among the
34 vendors and promoting economic efficiency in the process.

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

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

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

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

5 (c) Notwithstanding any other ~~provision~~ of law, contracts
6 awarded by any state agency, department, officer, or other state
7 governmental entity for construction, professional services (except
8 those subject to Chapter 6 (commencing with Section 16850) of
9 Part 3 of Division 4 of Title 2 of the Government Code), materials,
10 supplies, equipment, alteration, repair, or improvement shall have
11 statewide participation goals of not less than 15 percent for
12 minority business enterprises, not less than 5 percent for women
13 business enterprises and ~~3~~ 5 percent for disabled veteran business
14 enterprises. These goals apply to the overall dollar amount
15 expended each year by the awarding department, as defined by
16 Section 10115.1, pursuant to this article.

17 SEC. 8. Section 10115.13 of the Public Contract Code is
18 amended to read:

19 10115.13. Notwithstanding any other ~~provision~~ of law,
20 contracts awarded by any state agency, department, officer, or
21 other state governmental entity for the purchase of general public
22 advertisements shall have statewide participation goals of not less
23 than 15 percent for minority business enterprises, not less than
24 ~~five~~ 5 percent for women business enterprises, and ~~three~~ 5 percent
25 for disabled veteran business enterprises. These goals apply to the
26 overall dollar amount expended each year by the awarding state
27 agency, department, offices, or other state governmental entity.

28 SEC. 9. Section 10115.15 of the Public Contract Code is
29 amended to read:

30 10115.15. (a) Notwithstanding Section 10115.2, when
31 awarding contracts for materials, supplies, or equipment, including
32 electronic data processing goods and services, an awarding
33 department shall accept the submission by a bidder of a minority,
34 women, and disabled veteran business enterprise utilization plan
35 that has been approved prior to the solicitation due date by the
36 Department of General Services. A business utilization plan shall
37 be considered approved by the Department of General Services as
38 of the date submitted to the department so long as the plan meets
39 the minimum criteria established in paragraphs (1) to (12),
40 inclusive, and shall be valid for a period of one year, unless the

1 department has audited the utilization plan, as authorized under
2 subdivision (b), and disapproves it for reasons specified under
3 subdivision (c). The decision of whether to establish a minority,
4 women, and disabled veteran business enterprise utilization plan
5 shall be at the option of the vendor. If a bidder cites an approved
6 utilization plan in response to the minority, women, and disabled
7 veteran business enterprise participation requirements of a
8 solicitation that calls for 15 percent minority-owned, 5 percent
9 women-owned, and ~~3~~ 5 percent disabled veteran-owned business
10 participation, then that utilization plan shall be considered
11 responsive to the participation goals of the solicitation document.
12 If a solicitation specifies higher participation goals than those in
13 the bidder's utilization plan, the bidder shall meet the goals in the
14 solicitation. At a minimum, the utilization plan shall include the
15 following information:

16 (1) A statement of the vendor's minority, women, and disabled
17 veteran business enterprise utilization plan, including the primary
18 objectives of the utilization plan.

19 (2) An explanation showing sufficient business reasons why
20 the vendor did not meet minority, women, and disabled veteran
21 business enterprise participation goals set forth in the vendor's
22 minority, women, and disabled veteran business utilization plan
23 submitted to, and approved by, the Department of General Services
24 in the previous year, if applicable. Further, if the vendor did not
25 meet the minority, women, and disabled veteran business
26 participation goals in the previous year, the vendor shall also
27 identify remedial steps it will take to meet the goals in the current
28 utilization plan.

29 (3) A statement of the vendor's minority, women, and disabled
30 veteran business utilization goals for the succeeding year. At a
31 minimum, these utilization goals shall be equal to the statewide
32 participation goals set forth in subdivision (c) of Section 10115.

33 (4) Estimated total dollars to be subcontracted by the vendor
34 for sales within the United States for the succeeding year.

35 (5) Estimated total dollars to be subcontracted by the vendor
36 for sales within the State of California for the succeeding year.

37 (6) Total dollars expressed as a percentage of the amount
38 estimated pursuant to paragraph (4), intended to be subcontracted
39 with each of the following:

40 (A) Minority business enterprises.

1 (B) Women business enterprises.

2 (7) Total dollars, expressed as a percentage of the amount
3 estimated pursuant to paragraph (5), intended to be subcontracted
4 with disabled veteran-owned business enterprises.

5 (8) A representative listing of the products and services that the
6 vendor anticipates subcontracting, including an identification of
7 the types of subcontracting planned for minority, women, and
8 disabled veteran business enterprises.

9 (9) The name of the individual employed by the vendor who
10 will administer the vendor’s utilization plan, including a description
11 of the duties of the individual.

12 (10) A description of the efforts that the vendor will undertake
13 to ensure that minority, women, and disabled veteran business
14 enterprises will have an equitable opportunity to compete for
15 contracts.

16 (11) A listing of the records and reports that the vendor will
17 maintain to demonstrate the practices and procedures that have
18 been adopted to comply with the requirements and goals of the
19 utilization plan.

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

23 (b) The Department of General Services shall conduct random
24 audits of the submitted utilization plans to determine compliance
25 with this article, and shall retain on file all submitted utilization
26 plans for auditing purposes. During any audit of a submitted
27 utilization plan, the Department of General Services may ask a
28 vendor to submit a list of all the minority, women, and disabled
29 veteran business enterprises included as subcontractors in the
30 vendor’s plan for the previous year. This information shall remain
31 confidential. Nothing in this section shall be construed to require
32 the Department of General Services to audit all of the minority,
33 women, and disabled veteran business enterprise utilization plans
34 submitted by individual vendors. The Department of General
35 Services may establish appropriate fees to cover the actual costs
36 of conducting random audits and retaining on file all submitted
37 plans.

38 (c) (1) At any time, the Department of General Services may
39 disapprove a vendor’s minority, women, and disabled veteran
40 business enterprise utilization plan for any of the following reasons:

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

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

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

14 (2) If a vendor's utilization plan is disapproved, the vendor may
15 not submit a new utilization plan to the department for a period of
16 one year from the date of disapproval. Prior to disapproval of a
17 vendor's utilization plan, the vendor shall be entitled to a public
18 hearing and to five days' notice of the time and place thereof. The
19 notice shall state the reasons for the hearing.

20 (3) A vendor that submits a minority, women, and disabled
21 veteran business utilization plan that is approved by the Department
22 of General Services, and that is subsequently awarded a contract
23 to which the vendor would not otherwise have been entitled, and
24 who fails to evidence intention to fully comply with the minority,
25 women, and disabled veteran business enterprise goals in the
26 utilization plan, or fails to evidence sufficient business reasons for
27 failing to achieve the minority, women, and disabled veteran
28 business enterprise goals set forth in the utilization plan, shall:

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

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

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

37 Prior to imposition of any sanction under this chapter, the
38 contractor or vendor shall be entitled to a public hearing and to

- 1 five days' notice of the time and place thereof. The notice shall
- 2 state the reasons for the hearing.

O