

Senate Bill No. 115

CHAPTER 451

An act to amend Section 14845 of the Government Code, and to amend Sections 999, 999.5, 999.7, 999.11, and 999.12 of the Military and Veterans Code, relating to veterans.

[Approved by Governor October 3, 2005. Filed with
Secretary of State October 3, 2005.]

LEGISLATIVE COUNSEL'S DIGEST

SB 115, Florez. California Disabled Veteran Business Enterprise Program.

Under existing law, state agencies and all other state entities contracting for materials, supplies, equipment, alteration, repair, or improvement are required to have at least 3% participation goals for disabled veteran business enterprises. Existing law requires the Department of Veterans Affairs and the awarding departments to appoint a Disabled Veteran Business Enterprise Program Advocate to assist in meeting the participation goals.

This bill would specify that the Department of General Services is the administering agency of the California Disabled Veteran Business Enterprise Program, except in the case of contracts for professional bond services, would specify the duties of the Department of General Services in meeting that requirement, and would set standards for meeting the program's participation goals.

Existing law requires the Department of General Services' small business advocate to provide, at a minimum, specified services to small businesses.

This bill, instead, would require the department's small business advocate to provide these services to certified small businesses and certified disabled veteran business enterprises.

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

SECTION 1. Section 14845 of the Government Code is amended to read:

14845. Using existing resources, the Department of General Services' small business advocate shall, at a minimum, provide the following services:

(a) Assist certified small businesses and certified disabled veteran business enterprises by providing information regarding all of the following:

(1) Identification of potential certified small business and certified disabled veteran business enterprise subcontractors and potential subcontracting opportunities.

(2) Solicitation protest procedures and timelines.

(3) Prompt payment procedures.

(b) Using existing resources, develop and maintain an outreach and education program to assist certified small businesses and certified disabled veteran business enterprises to establish the California multiple award schedule. The department shall actively promote the availability of certified small business and certified disabled veteran business enterprise suppliers to deliver or provide a broad range of goods and services to governmental agencies through their participation in the California multiple award schedule program established pursuant to Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code and other types of contracts established by state agencies for repetitively used and commonly needed goods and services.

(c) Whenever the director consolidates the needs of multiple state agencies and establishes a contract for repetitively purchased or commonly needed goods or services, the director shall both encourage bidders to utilize certified small business and certified disabled veteran business enterprise suppliers and subcontractors, and utilize multiple award methods whenever practicable to further ensure that a fair proportion of needed goods and services are obtained from certified small businesses and certified disabled veteran business enterprises.

(d) Using existing resources, establish a training and development program for acquisition professionals, including methods for structuring solicitations to enhance the participation of certified small businesses and certified disabled veteran business enterprises in state contracting.

(e) Using existing resources, the department shall establish a recognition and awards program for state employees who make an outstanding contribution to the state's overall effort to increase the level of certified small business participation in state contracting or certified disabled veteran business enterprise participation in state contracting.

(f) Prepare, and make available to the public, a directory of certified small business and certified disabled veteran business enterprise suppliers.

(g) In its review of state agency acquisitions, the department, as applicable, shall identify areas where improvements in the level of participation of certified small businesses and certified disabled veteran business enterprises in state contracting can be achieved.

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

999. (a) This article shall be known as, and may be cited as, the California Disabled Veteran Business Enterprise Program. The California Disabled Veteran Business Enterprise Program is established to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship and to recognize the sacrifices of Californians disabled during military service. It is the intent of the Legislature that

every state procurement authority honor California’s disabled veterans by taking all practical actions necessary to meet or exceed the disabled veteran business enterprise participation goal of a minimum of 3 percent of total contract value.

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

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

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

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

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

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

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

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

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

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

(ac) Performs work that is normal for its business services and functions.

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

(ii) A contractor, subcontractor, or supplier will not be considered to perform a “commercially useful function” if the contractor’s,

subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of a disabled veteran business enterprise participation.

(6) "Disabled veteran" means a veteran of the military, naval, or air service of the United States, including, but not limited to, the Philippine Commonwealth Army, the Regular Scouts, "Old Scouts," and the Special Philippine Scouts, "New Scouts," who has at least a 10-percent service-connected disability and who is domiciled in the State of California.

(7) (A) "Disabled veteran business enterprise" means a business certified by the administering agency as meeting all of the following requirements:

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

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

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

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

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

(9) "Goal" means a numerically expressed objective that awarding departments and contractors are required to make efforts to achieve.

(10) "Management and control" means effective and demonstrable management of the business entity.

(11) "Professional bond services" include services as financial advisers, bond counsel, underwriters in negotiated transactions, underwriter's

counsel, financial printers, feasibility consultants, and other professional services related to the issuance and sale of bonds.

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

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

(b) The Department of Veterans Affairs shall do all of the following:

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

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

(3) Maintain complete records of its promotional efforts.

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

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

(d) 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.

SEC. 4. Section 999.7 of the Military and Veterans Code, as amended by Section 55 of Chapter 74 of the Statutes of 2005, is amended to read:

999.7. (a) (1) Notwithstanding Section 10115.5 of the Public Contract Code, on January 1 of each year, each awarding department shall report to the Department of General Services and the Department of Veterans Affairs on the level of participation by disabled veteran business enterprises in contracts identified in this article for the previous fiscal year.

(2) If the awarding department has not met the established goals for that year, the awarding department shall report to the Department of General Services and the Department of Veterans Affairs the reasons for the

awarding department's inability to achieve the goals and shall identify steps it shall take in an effort to achieve the goals.

(3) The Director of General Services shall adopt a streamlined reporting procedure for state agencies to use in reporting their disabled veteran business enterprise participation to the department.

(b) On April 1 of each year, the Department of General Services shall prepare for the Governor, the Legislature, and the Department of Veterans Affairs a statewide statistical summary detailing each awarding department's goal achievement and a statewide total of those goals.

(c) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 5. Section 999.11 of the Military and Veterans Code is amended to read:

999.11. The Secretary of the Department of Veterans Affairs shall appoint the California Disabled Veteran Business Enterprise Program Advocate. The California Disabled Veteran Business Enterprise Program Advocate shall report directly to the secretary and shall do all of the following:

(a) Oversee, promote, and coordinate efforts to facilitate implementation of this article.

(b) Disseminate information on this article.

(c) Coordinate reports pursuant to Section 999.7.

(d) Coordinate with administering agencies and existing and potential disabled veteran business enterprises to achieve the goals specified in Sections 999.1 and 999.2.

(e) Coordinate with the California Disabled Veteran Business Enterprise Program Advocate appointed in all awarding departments pursuant to Section 999.12.

SEC. 6. 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.