

Introduced by Senator BlockFebruary 22, 2013

An act to add Section 999.4 to the Military and Veterans Code, and to repeal Section 10115.15 of the Public Contract Code, relating to state contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 733, as introduced, Block. State contracts: disabled veteran business enterprise statewide participation goals: business utilization plan value.

Existing law establishes a 3% statewide participation goal for disabled veteran business enterprises for certain types of state contracts. Existing law requires an awarding department to award the contract to the lowest responsible bidder meeting specified statewide participation goals for disabled veteran business enterprises, and allows an awarding department to accept submission of a disabled veteran business enterprise utilization plan meeting certain requirements to meet this goal, as specified.

This bill would delete the provisions allowing the awarding department to accept submission of a disabled veteran business enterprise utilization plan. The bill would instead specify that the statewide participation goal for disabled veteran business enterprises may be met by the business utilization plan value of a business utilization plan partner, as defined, established by payments between the partner and a disabled veteran business enterprise, as specified. The bill would require the Department of General Services to certify persons meeting certain requirements as a business utilization plan partner, as defined, and would require a business utilization plan partner and a

disabled veteran business enterprise to report information relating to the business utilization plan value, as provided.

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 999.4 is added to the Military and
2 Veterans Code, to read:

3 999.4. (a) For purposes of this section, the following terms
4 have the following meanings:

5 (1) “Business utilization plan partner” or “partner” means a
6 person that bids for or intends to bid for the award of a contract
7 by a state agency, department, officer, or other state governmental
8 entity, including school districts when they are expending state
9 funds for construction, professional services (except those subject
10 to Chapter 6 (commencing with Section 16850) of Part 3 of
11 Division 4 of Title 2 of the Government Code), materials, supplies,
12 equipment, alteration, repair, or improvement, that has paid money
13 to a disabled veteran business enterprise in the previous fiscal year,
14 and that has been certified as a business utilization plan partner
15 by the department pursuant to paragraph (1) of subdivision (c).

16 (2) “Business utilization plan value” means the amount
17 established by the department pursuant to paragraph (2) of
18 subdivision (d) that has been paid by a business utilization plan
19 partner to a disabled veteran business enterprise in the previous
20 fiscal year for construction, professional services (except those
21 subject to Chapter 6 (commencing with Section 16850) of Part 3
22 of Division 4 of Title 2 of the Government Code), materials,
23 supplies, equipment, alteration, repair, or improvement, even if
24 those contract expenditures were not part of a contract awarded
25 by a state agency, department, officer, or other state governmental
26 entity.

27 (3) “Department” means the Department of General Services.

28 (b) The statewide participation goal for disabled veteran business
29 enterprises set forth in Section 999.2 and in subdivision (d) of
30 Section 10115 of the Public Contract Code may be met using the
31 business utilization plan value of a business utilization plan partner
32 established for the previous fiscal year, except that the business
33 utilization plan value in excess of 3 percent of the amount of the

1 contract or contracts awarded to the partner by the state agency,
2 department, officer, or other state governmental entity, including
3 school districts when they are expending state funds for
4 construction, professional services (except those subject to Chapter
5 6 (commencing with Section 16850) of Part 3 of Division 4 of
6 Title 2 of the Government Code), materials, supplies, equipment,
7 alteration, repair, or improvement shall not be used to meet the
8 statewide participation goal for disabled veterans.

9 (c) (1) The Department of General Services shall certify as a
10 business utilization plan partner a person or firm that has submitted
11 documentation from the person or firm and from a disabled veteran
12 business enterprise demonstrating that the person or firm is a
13 business utilization plan partner, including documentation
14 confirming the amount paid to the disabled veteran business
15 enterprise by the partner in the previous fiscal year.

16 (2) The department shall establish a partner's business utilization
17 plan value using copies of invoices submitted to the department
18 by the partner and the disabled veteran business enterprise to
19 substantiate the business utilization plan value.

20 (d) (1) When a partner is awarded a contract with a state agency,
21 department, officer, or other state governmental entity for which
22 the business utilization plan value will be used to meet the
23 statewide participation goal for disabled veteran business
24 enterprises as authorized by this section, the business utilization
25 plan value being used shall be reported to the department by both
26 the partner and the disabled veteran business enterprise, and shall
27 be subtracted by the department from the business utilization plan
28 value remaining that may be utilized by the partner to qualify as
29 meeting the goals of this article for purposes of Section 999.2 and
30 of Section 10115.2 of the Public Contract Code. Until a report is
31 made pursuant to this paragraph, no further business utilization
32 plan value of the partner may be used pursuant to this section.

33 (2) When the full business utilization plan value of a partner
34 that is eligible for use pursuant to this section has been used
35 pursuant to this section, a notification letter signed by both the
36 partner and the disabled veteran business enterprise shall be
37 submitted to the department confirming that the full business
38 utilization plan value has been used.

39 (e) (1) The department shall suspend any person who willfully
40 violates the reporting requirements of this section from bidding

1 on, or participating as either a contractor, subcontractor, or supplier
2 in, any state contract or project for a period of two years, and, if
3 certified as a disabled veteran business enterprise, the department
4 shall revoke the business' certification for a period of two years.
5 The department shall prohibit any business or person who willfully
6 violates the reporting requirements of this section from bidding
7 on, or participating as either a contractor, subcontractor, or supplier
8 in, any state contract or project, and, if certified as a disabled
9 veteran business enterprise, the department shall permanently
10 revoke the business' certification.

11 (2) No awarding department shall enter into any contract with
12 any person suspended under this subdivision during the period of
13 the person's suspension or with any person prohibited from
14 contracting under this subdivision. No awarding department shall
15 award a contract to any contractor utilizing the services of any
16 person as a subcontractor suspended under this subdivision for the
17 period of the person's suspension or utilizing the services of any
18 person or contractor prohibited from contracting under this
19 subdivision.

20 (3) The awarding department shall check a central listing
21 provided by the department to verify that the person or contractor
22 to whom the contract is being awarded, or any person being utilized
23 as a subcontractor or supplier by that person or contractor, is not
24 under suspension for violating this section or is not prohibited
25 from contracting under this section.

26 (4) This subdivision does not apply to any contract necessary
27 for the protection of the public health, safety, or welfare.

28 (f) Section 999.9 shall not be applicable to violations of this
29 section.

30 SEC. 2. Section 10115.15 of the Public Contract Code is
31 repealed.

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

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

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

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

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

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

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

- 1 ~~(6) Total dollars expressed as a percentage of the amount~~
2 ~~estimated pursuant to paragraph (4), intended to be subcontracted~~
3 ~~with each of the following:~~
- 4 ~~(A) Minority business enterprises.~~
5 ~~(B) Women business enterprises.~~
- 6 ~~(7) Total dollars, expressed as a percentage of the amount~~
7 ~~estimated pursuant to paragraph (5), intended to be subcontracted~~
8 ~~with disabled veteran-owned business enterprises.~~
- 9 ~~(8) A representative listing of the products and services that the~~
10 ~~vendor anticipates subcontracting, including an identification of~~
11 ~~the types of subcontracting planned for minority, women, and~~
12 ~~disabled veteran business enterprises.~~
- 13 ~~(9) The name of the individual employed by the vendor who~~
14 ~~will administer the vendor's utilization plan, including a description~~
15 ~~of the duties of the individual.~~
- 16 ~~(10) A description of the efforts that the vendor will undertake~~
17 ~~to ensure that minority, women, and disabled veteran business~~
18 ~~enterprises will have an equitable opportunity to compete for~~
19 ~~contracts.~~
- 20 ~~(11) A listing of the records and reports that the vendor will~~
21 ~~maintain to demonstrate the practices and procedures that have~~
22 ~~been adopted to comply with the requirements and goals of the~~
23 ~~utilization plan.~~
- 24 ~~(12) Affirmation that the vendor met the statewide minority,~~
25 ~~women, and disabled veteran business enterprise utilization goals~~
26 ~~for the previous year, if applicable.~~
- 27 ~~(b) The Department of General Services shall conduct random~~
28 ~~audits of the submitted utilization plans to determine compliance~~
29 ~~with this article, and shall retain on file all submitted utilization~~
30 ~~plans for auditing purposes. During any audit of a submitted~~
31 ~~utilization plan, the Department of General Services may ask a~~
32 ~~vendor to submit a list of all the minority, women, and disabled~~
33 ~~veteran business enterprises included as subcontractors in the~~
34 ~~vendor's plan for the previous year. This information shall remain~~
35 ~~confidential. Nothing in this section shall be construed to require~~
36 ~~the Department of General Services to audit all of the minority,~~
37 ~~women, and disabled veteran business enterprise utilization plans~~
38 ~~submitted by individual vendors. The Department of General~~
39 ~~Services may establish appropriate fees to cover the actual costs~~

1 of conducting random audits and retaining on file all submitted
2 plans:

3 (e) (1) At any time, the Department of General Services may
4 disapprove a vendor's minority, women, and disabled veteran
5 business enterprise utilization plan for any of the following reasons:

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

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

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

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

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

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

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

1 ~~(C) Be ineligible to transact any business with the state for a~~
2 ~~period of not less than three months and not more than 24 months.~~
3 ~~Prior to imposition of any sanction under this chapter, the~~
4 ~~contractor or vendor shall be entitled to a public hearing and to~~
5 ~~five days' notice of the time and place thereof. The notice shall~~
6 ~~state the reasons for the hearing.~~