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GOVERNMENT CODE - GOV

TITLE 2. GOVERNMENT OF THE STATE OF CALIFORNIA [8000 - 22980] (Title 2 enacted by Stats. 1943, Ch. 134.)

DIVISION 4. FISCAL AFFAIRS [16100 - 17700] (Division 4 added by Stats. 1945, Ch. 119.)

PART 3. STATE BONDS [16650 - 16965.1] (Part 3 added by Stats. 1945, Ch. 120.)

CHAPTER 6. Minority and Women Business Participation Goals for Professional Bond Services [16850 - 16857] (Chapter 6 added by Stats. 1988, Ch. 61, Sec. 1.)

16850. (a) Notwithstanding any other provision of law, each awarding department shall have annual statewide participation goals of not less than 15 percent for minority business enterprises and 5 percent for women business enterprises for contracts entered into by the awarding department during the year for each of the professional bond services. This section shall not apply if a contract for professional bond services of an underwriter is to be obtained by competitive bid. However, each awarding department shall establish goals for contracts to be obtained by competitive bid for professional bond services, as defined in Section 16851.

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

(b) In attempting to meet the goals set forth in subdivision (a), the awarding department shall consider establishing cocounsel, joint venture, and subcontracting relationships including minority business enterprises and women business enterprises in all contracts for bonds awarded by the awarding department. However, nothing in this article shall preclude the awarding department from achieving the goals set forth in this section without requiring joint ventures, cocounsel, or subcontracting arrangements.

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

(d) Nothing in this chapter shall be construed to authorize any awarding department to discriminate in the awarding of any contract on the basis of race, color, sex, ethnic origin, or ancestry.

(Amended by Stats. 1989, Ch. 1229, Sec. 2.)

16851. As used in this chapter, the following definitions apply:

(a) "Awarding department" means any agency, department, constitutional officer, governmental entity, or other officer or entity of the state empowered by law to issue bonds on behalf of the State of California.

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

(c) "Contract" includes any contract, agreement, or joint agreement to provide professional bond services to the State of California or an awarding department.

(d) "Contractor" means any provider of professional bond services who enters into a contract with an awarding department.

(e) "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.

(f) "Goal" means a numerically expressed objective that awarding departments and providers of professional bond services are required to make efforts to achieve.

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

(h) "Minority" means an ethnic person of color including American Indians, Asians (including, but not limited to, Chinese, Japanese, Koreans, Pacific Islanders, Samoans, and Southeast Asians), Blacks, Filipinos, and Hispanics. A minority must be a citizen of the United States or a lawfully admitted permanent resident as defined in Title 8 U.S.C. 1101(a)(20).

(i) "Minority business enterprise" means a business concern that meets all of the following requirements:

(1) A sole proprietorship owned by a minority; a firm or partnership, at least 51 percent of the voting stock or partnership interests of which are owned by one or more minorities; a subsidiary which 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 minorities; or a joint venture in which at least 51 percent of the joint venture's management of the joint venture business and at least 51 percent of the joint venture's earnings are controlled or retained by the minority participants in the joint venture.

(2) Management and control of daily business operations by one or more minorities although not necessarily the same minorities who are owners of the business.

(3) A sole proprietorship, corporation, joint venture, 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.

(j) "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.

(k) A woman owner of a women business enterprise must be a citizen of the United States or a lawfully admitted permanent resident as defined in Title 8 U.S.C. 1101(a)(20).

"Women business enterprise" means a business concern that is all of the following:

(1) A sole proprietorship owned by a woman; a firm or partnership, at least 51 percent of the voting stock or partnership interests of which are owned by one or more women; a subsidiary which 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 women; or a joint venture in which at least 51 percent of the joint venture's management of the joint venture business and at least 51 percent of the joint venture's earnings are controlled or retained by the women participants in the joint venture.

(2) Management and control of daily business operations by one or more women although not necessarily the same women who are the owners of the business.

(3) A sole proprietorship, corporation, joint venture, 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.

(l) "Minority business enterprise" and "women business enterprise," include an enterprise of which 50 percent is owned and controlled by one or more minorities and the other 50 percent is owned and controlled by one or more women, or, in the case of a publicly owned business, 50 percent of the stock of which is owned and controlled by one or more minorities and the other 50 percent is owned and controlled by one or more women. Any business enterprise so defined may be counted as either a minority business enterprise or a women business enterprise for purposes of meeting the participation goals, but no one such business enterprise shall be counted as meeting the participation goals in both categories.

(Amended by Stats. 1991, Ch. 1021, Sec. 1.)

16852. Notwithstanding Section 16850, if a contract for professional bond services of an underwriter is to be obtained by competitive bid, the awarding department shall, at a minimum, take all of the following actions:

(a) Deliver the notice of sale or other notification of intention to the issue the bonds to all minority and women business enterprises that have listed their names with the awarding department for the purpose of this notice and other qualified minority and women business enterprises known to the awarding department.

(b) State in all notices of sale and other notifications of intention to issue bonds that minority and women business enterprises are encouraged to respond.

(c) Require all submitting bidders to certify their awareness of the goals of the awarding department in accordance with this chapter.

(d) Nothing in this section shall be construed to authorize any awarding department to discriminate in the solicitation of bids or in the awarding of contracts on the basis of race, color, sex, ethnic origin, or ancestry.

(Amended by Stats. 1989, Ch. 1229, Sec. 4.)

16852.5. (a) Any awarding department taking bids in connection with the award of any contract shall provide, in the general conditions under which bids will be received, that any person making a bid or offer to perform a contract shall, in his or her bid or offer, set forth the following information:

(1) The name and the location of the place of business of each subcontractor certified as a minority, women, or disabled veteran business enterprise who will perform work or labor or render service to the prime contractor in connection with the performance of the contract and who will be used by the prime contractor to fulfill minority, women, and disabled veteran business enterprise participation goals.

(2) The portion of work that will be done by each subcontractor under paragraph (1). The prime contractor shall list only one subcontractor for each portion of work as is defined by the prime contractor in his or her bid or offer.

(b) The Subletting and Subcontracting Fair Practices Act (Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code) shall apply to the information required by subdivision (a) relating to subcontractors certified as minority, women, and disabled veteran business enterprises.

(c) For purposes of this section, "subcontractor" and "prime contractor" shall have the same meaning as those terms are defined in Section 4113 of the Public Contract Code.

(Added by Stats. 1993, Ch. 1032, Sec. 1. Effective January 1, 1994.)

16853. (a) The awarding department shall establish a method of monitoring adherence to the goals specified in Section 16850, including requiring a followup report from all contractors upon the completion of any sale of bonds.

(b) The awarding department shall adopt rules and regulations for the purpose of implementing this section. Emergency regulations consistent with this section may be adopted.

(Added by Stats. 1988, Ch. 61, Sec. 1.)

16854. In implementing this chapter, the awarding department shall utilize existing resources such as the Office of Small and Minority Business.

(Added by Stats. 1988, Ch. 61, Sec. 1.)

16855. Beginning July 1, 1989, and on January 1, 1990, and on January 1 of each year thereafter, each awarding department shall report to the Governor and the Legislature on the level of participation by minority and women business enterprises in contracts as identified in this chapter. If the established goals are not met, the awarding department shall report the reasons for its inability to achieve the goals and identify steps it shall take in an effort to achieve the goals.

(Added by Stats. 1988, Ch. 61, Sec. 1.)

16856. (a) Notwithstanding anything in this chapter to the contrary, the validity or enforceability of any bonds to which this chapter applies shall not be affected in any way by the failure of an awarding department to meet the goals established under this chapter.

(b) No action may be maintained to enjoin the issuance of any bonds to which this chapter applies or the enforcement of any contract for professional bond services based on an awarding department's failure to meet the goals set forth in Section 16850.

(Added by Stats. 1988, Ch. 61, Sec. 1.)

16857. (a) It shall be unlawful for a person to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, acceptance or certification as a minority, women, or disabled veteran business enterprise, for the purposes of this chapter.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the acceptance or certification or denial of acceptance or certification of any entity as a minority, women, or disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity which has requested acceptance or certification as a minority, women, or disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person or firm is not entitled under this chapter.

(5) Establish, or cooperate in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to (4), inclusive. Any person or firm who violates this paragraph is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed fifty thousand dollars (\$50,000) for the first violation, and a civil penalty not to exceed two hundred thousand dollars (\$200,000) for each additional or subsequent violation.

(6) This section shall not apply to minority and women business enterprise programs conducted by public utility companies pursuant to the California Public Utilities Commission's General Order 156.

(b) Any person who violates paragraphs (1) to (4), inclusive, of subdivision (a) is guilty of a misdemeanor and shall be liable for a civil penalty not to exceed five thousand dollars (\$5,000) for the first violation, and a civil penalty not to exceed twenty thousand dollars (\$20,000) for each additional or subsequent violation.

(c) Any person or firm that violates subdivision (a) shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as either a contractor or subcontractor in, any contract awarded by the state for a period of not less than 30 days nor more than one year. However, for an additional or subsequent violation, the period of suspension shall be extended for a period of up to three years. Any person or firm that fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) The awarding department shall report all alleged violations of this section to the Office of Small and Minority Business. The office shall subsequently report all alleged violations to the Attorney General who shall determine whether to bring a civil action against any person or firm for violation of this section.

(e) The office shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(f) No awarding department shall enter into any contract with any person or firm suspended for violating this section during the period of the person's or firm's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person or firm as a subcontractor suspended for violating this section during the period of the person's or firm's suspension.

(g) The awarding department shall check the central listing provided by the office to verify that the person, firm, or contractor to whom the contract is being awarded, or any person, or firm, being utilized as a subcontractor by that person, firm, or contractor, is not under suspension for violating this section.

(Amended by Stats. 1993, Ch. 1032, Sec. 2. Effective January 1, 1994.)