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AB-230 Disabled veteran business enterprises. (2019-2020)

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Assembly Bill No. 230

CHAPTER 676

An act to amend Sections 14839 and 14841 of the Government Code, to amend Section 999.5 of the Military and Veterans Code, and to add Section 10230 to the Public Contract Code, relating to veterans.

[Approved by Governor October 09, 2019. Filed with Secretary of State October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 230, Brough. Disabled veteran business enterprises.

Under existing law, 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. Existing law requires the Director of General Services to adopt written policies and guidelines establishing a uniform process for state contracting to provide a disabled veteran business enterprise (DVBE) participation incentive to bidders, which all state agencies are required to use when awarding contracts.

Existing law states the intent of the Legislature that every state procurement authority meet or exceed a DVBE participation goal of a minimum of 3% of total contract value. Existing law requires a department awarding a contract to, upon completion of that contract, require the prime contractor that entered into a subcontract with a DVBE to certify specified information to the awarding department, including, among other things, the amount each DVBE received from the prime contractor.

This bill would require that information to include proof of payment for work done by the DVBE, upon request of the awarding department, and the amount and percentage of work the prime contractor committed to provide to one or more DVBEs under the contract. The bill would also require every state contract for which DVBE participation is included in the bid to contain a provision requiring the contractor to comply with all rules, regulations, ordinances, and statutes that apply to the California Disabled Veteran Business Enterprise Program.

Existing law allows a prime contractor to replace a DVBE identified by the prime contractor in its bid or offer with another DVBE.

This bill would instead require the prime contractor to use the DVBE subcontractors or suppliers proposed in the bid or proposal to the state unless a substitution is requested and approved, as specified.

Existing law requires the Secretary of Veterans Affairs to appoint the California Disabled Veteran Business Enterprise Program Advocate and requires the advocate to perform certain duties, including disseminating information on the program and coordinating specified reports.

The bill would direct the Office of Small Business and Disabled Veteran Business Enterprise Services to coordinate with the state advocate.

This bill would incorporate additional changes to Section 999.5 of the Military and Veterans Code proposed by SB 588 to be operative only if this bill and SB 588 are enacted and this bill is enacted last.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. It is the intent of the Legislature in enacting this legislation to implement the recommendations of the California State Auditor Report 2018-114 on the Disabled Veteran Business Enterprise Program.

SEC. 2. Section 14839 of the Government Code is amended to read:

14839. (a) There is hereby established within the department the Office of Small Business and Disabled Veteran Business Enterprise Services. The duties of the office shall include:

(1) Compiling and maintaining a comprehensive bidders list of qualified small businesses and disabled veteran business enterprises, and noting which small businesses also qualify as microbusinesses.

(2) Coordinating with the Federal Small Business Administration, the Minority Business Development Agency, the California Disabled Veteran Business Enterprise Program Advocate, appointed by the Secretary of the Department of Veterans Affairs pursuant to Section 999.11 of the Military and Veterans Code, and the Small Business Advocate, appointed by the Governor pursuant to Section 12098.3.

(3) Providing technical and managerial aids to small businesses, microbusinesses, and disabled veteran business enterprises, by conducting workshops on matters in connection with government procurement and contracting.

(4) Assisting small businesses, microbusinesses, and disabled veteran business enterprises, in complying with the procedures for bidding on state contracts.

(5) Working with appropriate state, federal, local, and private organizations and business enterprises in disseminating information on bidding procedures and opportunities available to small businesses, microbusinesses, and disabled veteran business enterprises.

(6) Making recommendations to the department and other state agencies for simplification of specifications and terms in order to increase the opportunities for small business, microbusiness, and disabled veteran business enterprise participation.

(7) Developing, by regulation, other programs and practices that are reasonably necessary to aid and protect the interest of small businesses, microbusinesses, and disabled veteran business enterprises in contracting with the state, including, but not limited to, those specified in Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(8) Making efforts to develop, in cooperation with associations representing counties, cities, and special districts, a core statewide small business certification application that may be adopted by all participating entities, with any supplemental provisions to be added as necessary by the respective entities.

(b) The information furnished by each contractor requesting a small business or microbusiness preference shall be under penalty of perjury.

SEC. 3. Section 14841 of the Government Code is amended to read:

14841. Upon completion of an awarded contract for which a commitment to achieve small business or disabled veteran business enterprise participation goals was made, the contractor shall report to the awarding department the actual percentage of small business and disabled veteran business enterprise participation that was achieved. A contract that includes disabled veteran business enterprise participation shall also meet the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

SEC. 4. 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 Secretary of 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 is not certified at the time of the award or does not meet and maintain the certification requirements.

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

- (1) The total amount the prime contractor received under the contract.
- (2) The name and address of the disabled veteran business enterprise that participated in the performance of the contract.
- (3) The amount and percentage of work the prime contractor committed to provide to one or more disabled veteran business enterprises under the requirements of the contract and the amount each disabled veteran business enterprise received from the prime contractor.
- (4) That all payments under the contract have been made to the disabled veteran business enterprise. Upon request by the awarding department, the prime contractor shall provide proof of payment for the work.

(e) An awarding department shall keep that certification on file. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of two thousand five hundred dollars (\$2,500) and the maximum amount of twenty-five thousand dollars (\$25,000). An action for a civil penalty under this subdivision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment.

(f) After being awarded a contract, the prime contractor shall use the disabled veteran business enterprise subcontractors or suppliers proposed in the bid or proposal to the state unless a substitution is requested and approved. The prime contractor shall request the substitution in writing to the awarding department and receive approval from both the awarding department and the Department of General Services in writing prior to the commencement of any work by the proposed subcontractor or supplier. A substitution pursuant to this subdivision shall additionally comply with regulations adopted by the Department of General Services.

(g) The administering agency shall adopt rules and regulations for the purpose of implementing this section.

SEC. 4.5. 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 Secretary of 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 is not certified at the time of the award or does not meet and maintain the certification requirements.

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

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

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

(3) The amount and percentage of work the prime contractor committed to provide to one or more disabled veteran business enterprises under the requirements of the contract and the amount each disabled veteran business enterprise received from the prime contractor.

(4) That all payments under the contract have been made to the disabled veteran business enterprise. Upon request by the awarding department, the prime contractor shall provide proof of payment for the work.

(e) An awarding department shall keep the certification required pursuant to subdivision (d) on file.

(f) A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of two thousand five hundred dollars (\$2,500) and the maximum amount of twenty-five thousand dollars (\$25,000). An action for a civil penalty under this subdivision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment.

(g) After being awarded a contract, the prime contractor shall use the disabled veteran business enterprise subcontractors or suppliers proposed in the bid or proposal to the state unless a substitution is requested and approved. The prime contractor shall request the substitution in writing to the awarding department and receive approval from both the awarding department and the Department of General Services in writing prior to the commencement of any work by the proposed subcontractor or supplier. A substitution pursuant to this subdivision shall additionally comply with regulations adopted by the Department of General Services.

(h) The administering agency shall adopt rules and regulations for the purpose of implementing this section.

SEC. 5. Section 10230 is added to the Public Contract Code, to read:

10230. Every contract subject to this part, for which disabled veteran business enterprise participation is included in the bid, shall contain a provision requiring the contractor to comply with rules, regulations, ordinances, and statutes that apply to the California Disabled Veteran Business Enterprise Program as defined in Section 999 of the Military and Veterans Code, including, but not limited to, the requirements of subdivision (d) of Section 999.5 of the Military and Veterans Code.

SEC. 6. Section 4.5 of this bill incorporates amendments to Section 999.5 of the Military and Veterans Code proposed by both this bill and Senate Bill 588. That section of this bill shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2020, (2) each bill amends Section 999.5 of the Military and Veterans Code, and (3) this bill is enacted after Senate Bill 588, in which case Section 4 of this bill shall not become operative.