

Date of Hearing: April 20, 2010

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT AND THE
ECONOMY

V. Manuel Perez, Chair

AB 2627 (Nielsen) – As Amended: April 8, 2010

SUBJECT: Disabled veteran business enterprises: contracts

SUMMARY: Provides that the calculation of the portion of state funds that count toward the Disabled Veteran Business Enterprise (DVBE) goal can only be the broker's commission fees, if the funds were awarded through a broker, as specified. Specifically, this bill:

- 1) Requires that for state funds expended through a broker or equipment broker, only the broker's commission fees shall be credited toward the participation goals established for DVBEs.
- 2) Specifies that a DVBE that rents equipment to an awarding department or contractor shall be deemed to be an equipment broker.
- 3) Requires a DVBE that rents equipment to an awarding department or contractor shall, prior to performing the contract, shall submit to the awarding department a declaration signed by each disabled veteran owner and manager stating that the enterprise obtained the contract by representing that the enterprise was a DVBE, as specified.
- 4) Revises the definitions of a broker or agent, equipment, and equipment broker to include contractor or subcontractor, as specified.

EXISTING LAW

- 1) Requires all contracts awarded by any state agency, department, officer, or other state government entity, including school districts when they are expending state funds for construction, professional services, materials supplies, equipment, alteration, repair, or improvement, are required to have statewide participation goals of not less than 3% for DVBE contractor and subcontractor. These goals apply to the overall dollar amount expended each year by the awarding department.
- 2) Defines for the California DVBE program the terms "Broker" or "Agent", "Equipment", and "Equipment broker".
- 3) Requires DVBEs that rent equipment to an awarding department to be deemed to be an equipment broker unless one or more DVBEs have 51% ownership of the quantity and the value of each piece of equipment. If the equipment is owned by one or more disabled veterans, each disabled veteran owner, prior to performance under any contract or subcontract, is required to submit to the awarding department a declaration signed by the disabled veteran owner stating that the owner is a disabled veteran and providing specific identification information. Each disabled veteran owner shall submit his/her federal income tax returns to the administering agency as if he/she were a DVBE. The DVBE who fails to submit his/her tax returns will be deemed to be an equipment broker.

- 4) Requires a DVBE that rents equipment to an awarding department or contractor to submit to the awarding department a declaration signed by each disabled veteran owner and manager stating that the enterprise obtained the contract by representing itself as a DVBE, as specified.
- 5) Provides that state funds expended for equipment rented from equipment brokers shall not be credited toward the 3% goal.

FISCAL EFFECT: Unknown

COMMENTS:

- 1) Purpose: This bill currently makes a number of seemingly technical changes to the DVBE procurement laws. The author has been very forthcoming and open with the committee staff by clearly indicating that the sponsor intends to make broader amendments to the bill relating to the impact of the 2009 changes which removed the Good Faith Effort provisions.

It had been the intention of the sponsor to reach an agreement on language prior to JEDE's deadline of April 13, 2010. The sponsor, Associated General Contractors, were unable to reach a consensus in a timely manner. Committee staff advised the author's office and the sponsor of the importance of engaging the full range of DVBE stakeholders when attempting to address this issue. The sponsors indicated that fairly extensive amendments may be added to the bill at a later date. The committee members may wish to discuss with the author and sponsor, future plans when the bill is heard.

- 2) Demonstrating a good faith effort prior to August 2009: Prior to the enactment of AB 21 (x4) (Evans), non-DVBE bidders on state contracts could either subcontract with a DVBE, demonstrate that they had made a good faith effort to subcontract with a DVBE, or reference a DGS-approved DVBE Business Utilization Plan. In demonstrating a good faith effort, the contractor would submit information in the bid package that demonstrated that the following actions were taken:
 - a) The bidder contacted the awarding department to identify a DVBE contractor who may be interested in subcontracting;
 - b) The bidder contacted other state and federal agencies and local DVBE organizations to identify DVBE contractors who may be interested in subcontracting;
 - c) The bidder sent invitations to bid on a project to potential DVBE contractors and that responses to those solicitations were properly considered; and
 - d) The bidder advertised in trade papers and papers focusing on DVBEs. If the time limits imposed by the awarding department were insufficient to reasonably purchase advertisement, this requirement can be waived.
- 3) Where did AB 21 (x4) come from and how do we know it is broken? It is the understanding of policy committee staff that the language in AB 21 (x4) was drafted by the Administration as a reform to the state's procurement practices and then provided to the 2009-10 Budget

Conference Committee for inclusion in the final package of budget trailer bills. The bill passed the Assembly (76-2) and the Senate (33-0), almost unanimous votes.

AB 21 (x4) included an urgency clause making the bill effective on July 28, 2009. In the ensuing months concerns have been raised by some contractors that the current DVBE requirements may be too difficult. However, no specific information has been provided to the JEDE to document this concern.

Based on the complexity and time required to put out a state procurement solicitation, it may be too soon to know whether the requirements of AB 21 (x4) are too difficult and that the state should, therefore, abandon a decision made less than one year ago.

- 4) The Small Business Act: The Small Business Act, administered through DGS, was implemented more than 30 years ago to establish a small business preference within the state's procurement process that would increase the number of contracts between the state and small businesses. In 1989, a DVBE component was added to state procurement practices.

Since 2001, there have been four Executive Orders (EOs) specifying a 25% goal for small business and a 3% DVBE participation in state procurement contracts, including EO D-37-01 (2001), EO S-02-06 (2006), EO D-43-01(2001), and EO S-11-06 (2006). These participation goals were codified in SB 115 (Florez), Chapter 451, Statutes of 2005, which called for DGS to establish a targeted DVBE incentive program to help state agencies meet the 3% goal; and in AB 761 (Coto), Chapter 611, Statutes of 2007, which specifically codified the 25% small business target for contracts related to revenues expended from the 2006 infrastructure bonds.

Notwithstanding the longstanding existence of the Act and these EOs, the state's success in obtaining small business and DVBE participation goals in state procurement contracts has been inconsistent.

Only twice since the small business participation target was established in 2001 through EO has DGS reported that the state achieved its 25% goal. In fiscal year 2007-08 the state did not achieve its small business target, as it only awarded 23.84%, or \$2.62 billion, of the value of all contracts to small businesses. Although procurement contract awards were down in 2007-08, there was an increase in the amount of contract dollars awarded. The state also did not achieve its 3% DVBE participation goal in 2006-07; the most recent numbers show a decrease from 2.8% to only 2.39% DVBE contracts awarded in 2007-08 and the state, again, saw an increase in awarded contract DVBE dollars to more than \$194 million.

- 5) Related legislation: Below is a list of related legislation:
 - a) AB 31 (Price) Small Business Procurement Contract Act: This bill increased the maximum contract threshold amount for awards to small business, including microbusiness and DVBEs under the streamlined procurement process, from \$100,000 to \$250,000, as specified. Further, the bill required contractors that made contract commitments to include small business or DVBE participation to report those final percent of the contact actually paid to these entities. Status: Chaptered by Secretary of State – Chapter 212, Status of 2009.

- b) AB 761 (Coto) - Codification of the Small Business Procurement Goals: This bill required each state agency awarding contracts that are financed with proceeds from the infrastructure bonds approved by voters in November 2006 to establish a 25% small business participation goal for state infrastructure construction contracts and to provide specified assistance to small businesses bidding on state infrastructure bond-related contracts. Status: Signed by the Governor, Chapter 611, Statutes of 2007.
- c) AB 1771 (Mendoza) - PIA Contracts: Provides that the requirement to purchase Prison Industry Authority (PIA) products shall not restrict state agencies from entering into purchase orders of \$25,000 or less with California certified small businesses (CSB), microbusinesses, or disabled veteran business enterprises (DVBEs) and that this subdivision shall only apply to contracts for products provided at a lower price than the price available from the PIA. Status: Pending in Assembly Committee on Jobs, Economic Development and the Economy.
- d) AB 1918 (Davis) -PUC Procurement: Requires the Public Utilities Commission (PUC) to require specified wireless telecommunications service providers to annually report on their progress in increasing contracting with women- and minority-owned businesses and disabled veteran business enterprises (DVBEs). Status: Pending in Assembly Committee on Jobs, Economic Development and the Economy.
- e) AB 2249 (Ruskin)- DVBE Procurement: Requires the Department of General Services (DGS) to require a Disabled Veteran Business Enterprise (DVBE) to file a completed form 4506-T from the federal Internal Revenue Service (IRS), if DGS has received a complaint regarding the DVBE; or is being audited by DGS. Status: Pending in Assembly Committee on Jobs, Economic Development and the Economy.
- f) AB 2773 (Price) - Size of Small Business Procurement Contracts: This bill increased the maximum contract threshold amount for awards to small business, including microbusiness and DVBEs under the streamlined procurement process, from \$100,000 to \$250,000, as specified. Further, the bill required contractors that made contract commitments to include small business or DVBE participation to report the final percent of the contact actually paid to these entities. Status: Held under submission in Senate Appropriations Committee in the 2007-08 legislative session.
- g) SB 115 (Florez) – Disabled Veterans Business Enterprise Program: This bill made various changes to the DVBE Program, including requiring DGS to establish a state agency-wide mandatory DVBE incentive program. This bill also requires the DGS Small Business Advocate to provide specified services to small businesses and certified DVBEs. Additionally, this bill requires DGS to adopt a streamlined reporting procedure for state agencies to use in reporting their DVBE participation to the Department of Veterans Affairs. Status: Signed by the Governor - Chapter 451, Statutes of 2005.
- h) SB 642 (Denham) Small Business Procurement: This bill increases the maximum contract threshold amount for awards to small business, including microbusiness and DVBEs under the streamlined procurement process, from \$100,000 to \$250,000, as specified. Further, the bill required contractors that made contract commitments to include small business or DVBE participation to report the final percent of the contact

actually paid to these entities. Status: Returned to the Secretary of the Senate pursuant to Joint Rule 56.

- i) AB 21 (X4) (Evans) – State Procurement Contracts: Changes requirements on bidders and state departments when considering contracts for procurement of goods and services. Status: Signed by the Governor - Chapter 19, Statutes of 2009.

REGISTERED SUPPORT / OPPOSITION:

Support

Associated General Contractors, (sponsor)

Opposition

None Received

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