

Date of Hearing: April 13, 2021

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Sabrina Cervantes, Chair

AB 1574 (Committee on Jobs, Economic Development, and the Economy) – As Amended April 6, 2021

**SUBJECT:** Public contracts: small business liaisons and advocates and disabled veteran business enterprises

**POLICY FRAME:** Small businesses play an essential role within the California economy, contributing the most net new jobs, offering an alternative to underemployment, and helping to disburse the financial advantages of the state's globally connected economy. State procurement opportunities, \$10.5 billion in 2018-19, represent an important economic tool to support small business development. While 26% more state dollars were expended through state contracts during 2018-19, for the first time in six years, the state did not meet the 25% small business goal and barely meet the 3% participation goal for disabled veteran business enterprises (DVBEs). One of the reasons cited for these lower small business and DVBE participation rate was the increase in procurement related to disaster response.

During the COVID-19 pandemic and raging fires of the summer, disaster related procurements have only increased removing millions of dollars from one of the state's largest small business development programs – The Small Business and DVBE Procurement Participation Program.

This bill includes program improvements gained through stakeholder engagements, discussions with state contracting staff, and recommendations from the 2019 State Audit of the DVBE Procurement Program. The Comments section of the analysis includes additional information on the state's Small Business Act, historic compliance issues, and current and prior legislation. There is no known opposition to this bill. Should this bill pass the Committee, the bill will be referred to the Assembly Committee on Accountability and Administrative Review for further policy consideration.

**SUMMARY:** AB 1574, a committee bill, enhances the ability to prosecute fraudulent contracting activity, increases collaboration among small business and DVBE advocates, and provides more targeted support to awarding departments in achieving small business and DVBE procurement participation goals. Specifically, **this bill:**

- 1) **Legislative Findings:** Makes legislative findings, including but not limited to:
  - a) California has a 30-year history of using state contracting to support business development within targeted business populations. Given the economic devastation as a result of the COVID-19 pandemic on small businesses, including veteran-owned businesses, it is important that the state aligns all of its resources to assist these businesses in recovery.
  - b) State law sets an annual 3% Disabled Veteran Business Enterprise (DVBE) procurement participation goal, and a 2006 executive order sets a 25% goal for small businesses and microbusinesses within state agencies, departments, boards, and commissions.
  - c) While encouraging small business participation furthers the state's interest in having a robust small business sector, the Small Business Procurement and Contract Act also establishes the policy foundation for DVBE contract participation. The DVBE procurement program is intended to both recognize the sacrifices of California's disabled military veterans, as well as address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship.

- d) In the state's experience, a majority of DVBEs are smaller size firms with 75.4% having dual certifications as a DVBE and microbusiness; moreover, 9.6% of DVEBs have dual certifications as a DVBE and small business. The remaining 15% of DVBEs operate with only a single DVBE certification.
- 2) **Prosecuting Fraudulent Activity:** Enhances the ability of the Department of General Services (DGS) to identify and prosecute prime contractors who do not meet the existing requirement that each small business and DVBE subcontractor serve a commercially useful function in the fulfillment of the contract. The bill:
- a) Expands the list of required information and documentation in the bid package to include:
    - i) The certification number and contact information for each DVBE be included in the bid package.
    - ii) A certification, signed under penalty of perjury, that each DVBE serves a commercially useful function.
  - b) Expands the number of eligible prosecutors that may bring a civil action from only the Attorney General to include any public prosecutor. Successful prosecutions allow the recovering of all costs and attorney's fees incurred by the public prosecutor and the costs incurred by the awarding department and DGS. The bill prohibits the public prosecutor, other than the Attorney General, to bring an action if DGS has concluded an administrative action for the same violation.
- 3) **DVBE Support from CalVet:** Clarifies the role of the California DVBE Program Advocate relative to the DGS's administrative role over state procurement activities. The California DVBE Program Advocate has the task to support and facilitate activities of administering agencies and existing and potential certified DVBEs in achieving the 3% DVBE procurement participation goal. This specifically includes supporting the efforts of the agency-level DVBE advocates and establishing a system to track the effectiveness of promotional activities undertaken by state agencies.
- 4) **DVBE Promotion Activities:** Adds four specific duties to the type of activities that may be used to enhance DVBE participation in state procurement activities:
- a) Identification of DVBEs that can offer services for contracts that procurement staff have historically found to be difficult in reaching through traditional advertising methods.
  - b) Assist DVBEs in effectively utilizing certification documentation and the state electronic procurement system to identify the range of products and services they have to offer.
- 5) **Collaboration in Program Delivery:** Specifies that, among other duties, the California Small Business Advocate has the task to collaborate with the:
- a) California Disabled Veteran Enterprise Program Advocate regarding the implementation of the DVBE procurement program. This collaboration includes promoting disabled veteran business enterprise certification to veteran-owned small businesses and assisting state agencies in improving small business and DVBE procurement participation.
  - b) Department-level small business liaisons by maintaining, publicizing, and distributing an annual list of persons serving as small business liaisons throughout the state. Small business liaisons are tasked, under existing law, with assisting small businesses understand and comply with state regulatory requirements.

- 6) **Expanding Procurement Opportunities to More Businesses:** Adds two definitions to the Small Business Contract Code:
- a) “Limited contracting small business enterprise” means a certified small business, as defined, in subdivision (d) has received fewer than five public contracts from the contracting department in the previous two years or has received public contracts from the contracting department totaling less than two hundred fifty thousand dollars (\$250,000) in the previous two years.
  - b) “New small business enterprise” means a certified small business, as defined in subdivision (d), has not received a public contract from the contracting department in the previous two years.
- 7) Makes other technical and conforming changes.
- 8) Inclusion of a crimes and penalty disclaimer.

**EXISTING LAW:**

- 1) Designates the DGS as the administrator of the state Small Business Procurement and Contract Act, which includes certifying and implementing targeted preference programs for certified small businesses, microbusinesses, and DVBEs.
- 2) Applies the 3% DVBE participation goal on each awarding state agency, department, and officer that enters into a contract for materials, supplies, equipment, alteration, repair, or improvement. This requirement can be waived on a specific contract with the approval of the department director or another designated person.
- 3) Authorizes contracting departments to offer a DVBE incentive. The application of an incentive varies from that of the small business and Target Area Contract Preference Act (TACPA) both in when it is incorporated into competitive solicitations and in how the incentive percentages are determined and calculated. Unlike a preference in which there is a 5% standardized value included in determining competitive solicitations, discretion is left to a department to determine incentive percentages (between 1% and 5%) for a particular transaction based upon a business strategy to achieve that department’s annual 3% DVBE procurement participation goal.
- 4) Authorizes a 5% preference to the lowest responsible bidder or highest scoring responsible meeting specifications who provides for certified small business or microbusiness subcontractor participation. This applies to state contracts for goods, information technology, services, and construction, as specified.
- 5) Requires an awarding state department to require a prime contractor who has committed to using a DVBE subcontractor in its awarded bid to certify the following upon completion of the contract:
  - a) The total amount the prime contractor received under the contract;
  - b) The name and address of each DVBE that participated in the performance of the contract;
  - c) The amount each DVBE subcontractor received from the prime contractor; and
  - d) That all required payments under the state contract have been made to each DVBE subcontractor.
- 6) Requires every small business and DVBE included within a bid serve a commercially useful function.

- a) A small business and DVBE is deemed to be performing a commercially useful functions if the business meets all the following conditions:
    - i) Is responsible for the execution of a distinct element of the work of the contract.
    - ii) Carries out its obligation by actually performing, managing, or supervising the work involved.
    - iii) Performs work that is normal for its business services and functions.
    - iv) Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment.
    - v) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.
  - b) 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 small business, microbusiness, or DVBE participation.
- 7) Provides that any person or entity that is found to have knowingly provided false information relative to a small business or DVBE subcontractor serving a commercially useful function is:
- a) Guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding one thousand dollars (\$1,000), or by both.
  - b) Liable for a civil penalty of not less than ten thousand dollars (\$10,000) nor more than thirty thousand dollars (\$30,000) for the first violation, and a civil penalty of not less than thirty thousand dollars (\$30,000) nor more than fifty thousand dollars (\$50,000) for each additional or subsequent violation.
  - c) Requires the person or entity to pay all costs and attorney's fees incurred by the plaintiff in a civil action brought pursuant to this section, including costs incurred by the awarding department or DGS.
- 8) Authorizes any public prosecutor, including the Attorney General, to bring a specified civil action in the name of the people of California for knowingly including false information in the DVBE payment certification submitted to the awarding department, and specifies that the penalty imposed shall be enforceable as a civil judgment.
- 9) Defines a "DVBE" as a business certified as being a sole proprietorship, corporation, or partnership with its home office located in the U.S. which is not a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business. In addition, a DVBE meets all of the following:
- a) The disabled veteran is a veteran of the military, naval, or air service of the U.S., including, but not limited to, the Philippine Commonwealth Army, Regular Scouts, "Old Scouts," Special Philippine Scouts, "New Scouts," and those who have at least a 10% service-connected disability and are domiciled in the state.
  - b) 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.

c) The DVBE's ownership of the business meets the following criteria:

- i) If the DVBE is a sole proprietorship, it is at least 51% owned by one or more disabled veterans.
- ii) If the DVBE is a publicly owned business, at least 51% of its stock is unconditionally owned by one or more disabled veterans.
- iii) If the DVBE is a subsidiary, it is wholly owned by a parent corporation, but only if at least 51% of the voting stock of the parent corporation is unconditionally owned by one or more disabled veterans.
- iv) If the DVBE is a joint venture, it is an entity in which at least 51% of the joint venture's management, control, and earnings are held by one or more disabled veterans.

10) Defines a "small business" as an independently owned and operated business that is not dominant in its field of operation; in addition, the principal office of which is located in California, the officers of which are domiciled in California, and which, together with affiliates, has 100 or fewer employees, with an average annual gross receipt of \$10 million or less over the previous three years.

- a) For a small business in the manufacturing sector, the limitation on an annual gross receipt is \$15 million.
- b) For a small business bidding on a public works contract, as defined, the maximum number of jobs 200 or fewer employees, and the limitation on the average annual gross receipt is \$36 million.
- c) A "microbusiness" is a small business with an average annual gross receipt limitation of \$5 million or is a manufacturer with 25 or fewer employees.

**FISCAL EFFECT:** Unknown

**COMMENTS & CONTEXT:**

- 1) **Small Business Procurement and Contract Act:** California has a 40-year history of utilizing state contracting to support business development within targeted business populations. Statute sets an annual 3% DVBE procurement participation goal, and a 2006 executive order sets a 25% small business and microbusiness participation goal for state agencies, departments, boards, and commissions.

While encouraging small business participation furthers the state's interest in having a robust small business sector, the Small Business Procurement and Contract Act also establishes the policy foundation for DVBE contract participation. The DVBE procurement program is intended to both recognize the sacrifices of California's disabled military veterans, as well as address the specific needs of disabled veterans seeking rehabilitation and training through entrepreneurship.

To assist state agencies in reaching these targeted procurement participation goals, state law authorizes:

- A procurement preference of 5% for bids using a certified small business as a prime or subcontractor;

- A streamlined alternative procurement process for smaller size contracts (between \$5,000 and \$250,000) whereby an awarding department can contract directly with a certified small business or DVBE after comparing the bid against two other similar businesses.
- A DVBE incentive that allows an awarding department to set an incentive percentage between 1% and 5% for a particular transaction.

In the state's experience, a majority of DVBEs are smaller size firms, with 86% having dual certifications, including 56.5% of all DVBE's also holding microbusiness certificates, 25.6% having a small business certification, and 0.6% having small business public works certification. The remaining 14% of DVBEs operate with only a single DVBE certification.

- 2) **Tracking Small Business and DVBE Procurement:** Given the importance of small businesses to California's economy, these procurement preferences play a key role in distributing state expenditures throughout the state, and among a variety of business types. The charts below (*Charts 1 and 2*) display small business and DVBE procurement participation for the most recent four fiscal years for which data is available.

<b>Chart 1 – Small Business and Microbusiness Contracting Activity of Mandated Reporters (dollars in millions)</b>				
Fiscal Year	Total Contract Dollars	Total Small Business and Microbusiness Contract Dollars	Total Percent	Total Number of Contracts
2018-19	\$10,531	\$2,168	20.58%	96,345
2017-18	\$8,361	\$2,720	32.50%	110,864
2016-17	\$6,329	\$1,683	26.60%	117,624
2015-16	\$5,855	\$2,112	36.08%	116,169
2014-15	\$8,117	\$2,079	25.61%	482,707
2013-14	\$7,101	\$2,013	28.35%	90,784
2012-13	\$7,616	\$1,801	23.66%	105,617
2011-12	\$7,399	\$1,796	24.28%	165,523
Source: DGS Statewide Consolidated Annual Reports for the contracting periods				

<b>Chart 2 – DVBE Five-Year Contracting Activity of Mandated Reporters (dollars in millions)</b>				
Fiscal Year	Total Contract Dollars	Total DVBE Dollars	Total DVBE Percent	Total DVBE Contracts
2018-19	\$10,531	\$340	3.23%	23,782
2017-18	\$8,314	\$387	4.7%	19,174
2016-17	\$6,329	\$259	4.1%	19,823
2015-16	\$5,855	\$274	4.6%	18,638
2014-15	\$8,105	\$314	3.8%	16,192
2013-14	\$6,566	\$241	3.6%	12,777
2012-13	\$7,151	\$216	3.0%	14,907
2011-12	\$7,173	\$340	4.7%	16,246
Source: DGS Statewide Consolidated Annual Reports for the contracting periods				

Based on the data displayed above, aside from 2018-19, the state appears to be generally meeting its 25% small business target and 3% DVBE procurement participation goals. These official numbers are, however, only part of the program assessment. DGS prepares an extensive annual report on state procurement activities, the *California Consolidated Report*. In addition to reporting the amount of contracts with small businesses and DVBEs, these reports also provide information on outreach

activities and other information to provide a framework for understanding the state's targeted procurement activities.

Although DGS works diligently to gather and aggregate this information, the *California Consolidated Report* also highlights potential data irregularities, including the inconsistent reporting by state agencies and the failure of some state agencies to even make a report. As an example, in 2012-13, only 79% of the mandatory reporting entities reported their contracting activity to DGS.

The data also provides only a partial look at contracting activities, as it reflects the amount contracted for and not the amounts actually received by a small business or DVBE. A state audit of the DVBE Program, released in 2019, suggests that very few state agencies have implemented practices to monitor and report DVBE procurement participation violations for follow-up by DGS.

- 3) **COVID-19 Procurement Opportunities:** Procurement reporting for the period of COVID-19 pandemic is difficult to track. With the state government operating under a state of emergency, state agencies are authorized to use alternative contracting protocols. Many small business groups have expressed concern to the Assembly Jobs Committee over the lack of access to new procurement opportunities since April of 2020.

There is good evidence that small business and DVBE participation in 2019-20 and 2020-21 procurement periods, the official data for which has yet to be released, will not meet the 25% and possibly the 3% goal. In its most recent *California Consolidated Report* (2018-19), DGS states that the "primary reason departments gave for not meeting the Small Business or DVBE participation goals was the large number of emergency contracts related to the 2018 wildfires, such as the Camp Fire."

To combat this trend, DGS reports that its Office of Small Business and DVBE Services has taken a number of steps to address the impact of large emergency/disaster related contracts on small businesses and DVBEs. A few highlights from their 2018-19 *California Consolidated Report* are provided below:

- ***New Register of Certified Firms for Emergency-related Contracts:*** Working with departments that make large disaster-related contracts, DGS identified approximately 32 activity/supplies categories for which small businesses and DVBEs will be able to register. Categories include but are not limited to: debris removal, energy generators, equipment rentals, rescue supplies, medical supplies, respiratory products, sanitation, food and fuel.
- ***Leveraged Procurement Agreements for Emergency Purchases:*** DGS finalized and expanded the Master Service Agreement (MSA) and California Multiple Award Schedule contracting opportunities for emergency procurement. This included the debris removal MSA.
- ***Targeted Outreach for Emergency Purchases:*** DGS is encouraging, and in some cases requiring, departments to reach out to DGS when conducting emergency procurements. DGS has committed to assisting awarding departments with identifying certified small businesses and DVBEs to meet their needs.

DGS believes that these changes will begin to show improvements in the 2021-22 contract activities. Implementation of AB 1574 would enhance these activities by directing the California Small Business Advocate and the CalVet DVBE Program Advocate in working with awarding departments on certification of DVBEs and targeted DVBE outreach for upcoming disaster-related contracts.

- 4) **The DVBE Program:** The 3% DVBE procurement participation goal is applied to the state agency's or department's overall contracting activities in the given fiscal year and may be achieved by awarding state contracts to DVBEs as prime contractors or when DVBEs are used as subcontractors.

Awarding departments have an option of including DVBE participation in every contract or making alternative arrangements, as long as the 3% objective is met at the end of the year.

When a DVBE participation requirement is included within a state procurement solicitation, bidders are required to commit to meeting or exceeding the minimum DVBE contract participation goal. There are two methods for meeting the participation goal:

- For a non-DVBE Bidder: The bidder must commit to use DVBEs for the amount stated in the bid document; or
- For a DVBE Bidder: The bidder must commit to performing not less than the amount stated in the bid document with its own firm or in combination with other DVBEs.

To facilitate state government entities in meeting their 3% DVBE and 25% small business contracting goals, each agency and department is required to designate a small business and DVBE contracting liaison. Departments also have the option of offering a 1% to 5% DVBE contracting preference to encourage bidders to use DVBE subcontractors. Although not currently being utilized, a bidder that is unable or unwilling to include a DVBE in a contract also has the option of submitting a DGS approved utilization plan that commits the business to using DVBEs in the future. DGS is authorized to audit businesses that submit utilization plans to ensure compliance.

State departments that fail to meet the annual 3% goal can have their delegated contracting authority removed, although DGS has never removed program authority solely based on an agency's or department's failure to meet its DVBE contracting goal.

DGS has a range of responsibilities relating to the implementation of the DVBE program, including *(receipt of more current data pending)*:

- Certification of DVBEs *(1,688 DVBEs certified in 2017-18)*;
- Certification of small businesses and microbusinesses *(17,925 small businesses and microbusinesses certified in 2017-18)*;
- Outreach to the potential bidders and the veteran community *(196 events in 2017-18)*;
- Marketing of the DVBE program to state agencies;
- Partnering with CalVet on consultations with departments that are not meeting participation goals;
- Consulting with the California Procurement Contracting Academy on the DVBE training of state contracting staff;
- Preparation of an annual consolidated report on DVBEs', small businesses', and microbusinesses' participation within state contracting activities; and
- Program oversight to identify abuses by bidders and failures to perform by state departments and agencies.



- 5) **Engagement Works:** In addition to the activities discussed in Comment 3, DGS also requires departments that do not meet their 25% and 3% targeted procurement goals to complete Improvement Plans. According to DGS, the Improvement Plan provides the department with an opportunity to explain the challenges it is experiencing in meeting the minimum small business and/or DVBE contracting participation goals and to propose specific strategies to improve their performance.

The DGS Office of Small Business and DVBE Services uses the Improvement Plans to help DGS address department-specific needs and recommend additional strategies to help the department meet their targeted procurement goals. In 2018-19, seven underperforming departments were selected for one-on-one counseling, based on their 2017-18 contract activity. The underperforming departments were provided with best practices and identification of resources and tools geared to the specific issues they raised during those discussions. **Chart 3** tracks the impact of these targeted interventions by the DGS Office of Small Business and DVBE Services and the seven departments.

<b>Chart 3 - Tracking Impact of Targeted Engagement by DGS</b>				
<b>Department</b>	<b>2017-18 SB/Micro</b>	<b>2017-18 DVBE</b>	<b>2018-19 SB/Micro</b>	<b>2018-19 DVBE</b>
California Arts Council	1.05%	0.61%	<b>52.62%</b>	<b>7.26%</b>
California Department of Human Resources	7.43%	5.07%	12.82%	<b>3.56%</b>
California Horse Racing Board	10.37%	0.30%	1.94%	0.60%
Secure Choice Retirement Savings Investment Board	4.19%	0.36%	<b>86.76%</b>	2.07%
California Tax Credit Allocation Committee	18.51%	0.09%	<b>73.42%</b>	<b>5.96%</b>
Resources Recycling and Recovery (CalRecycle)	8.71%	0.87%	0.17%	0.08%
Environmental Protection Agency	4.41%	0.77%	9.45%	2.13%
Source: The DGS Consolidated Report for 2019-20				

- 6) **Commercially Useful Function:** The commercially useful function requirement is a foundational component of the small business and DVBE targeted procurement program. Existing law requires all certified small businesses and DVBEs, including contractors, subcontractors and suppliers of goods and services, must serve a commercially useful purpose in the performance of the contract, i.e. add value to the contract.

This requirement applies to small businesses and DVBEs bidding on or participating in a state contract, regardless of the procurement approach or the payment method used. The small business or DVBE may not simply serve as a pass-through of contract activity.

Existing law is very specific as to how a small business or DVBE can meet the commercially useful function requirements. These include the small business or DBVE doing all of the following:

- Executing a distinct element of the contract work including supplying of goods/services.
- Performing, managing, or supervising the work including supplying of goods/services.
- Performing work that is normal for the firm's business services and functions.
- Is responsible, with respect to products, inventories, materials and supplies necessary for the subcontract, for negotiating price, determining quality and quantity, ordering, installing (if applicable), and paying for the material.
- Not subcontracting a portion of the work greater than expected by industry practices.

A small business or DVBE does not perform a commercially useful purpose if the business is:

- a) An extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of small business participation.
- b) Not being used to perform the work as stipulated in the bid.
- c) No longer used to provide the goods or services listed in the initial bid.

Without this requirement, the state would have no means by which to ensure that the small business and DVBE targeted procurement program is truly serving as the business development tool in which it was intended. Shell companies that pose as a small business or DVBE divert scarce public dollars from helping to grow California's economy to undeserving prime contractors. This includes special procurement rules to help bids including small businesses and DVBEs to be more competitive, such as the DVBE participation mandate, the DVBE incentive, and the Small Business preference.

- 7) **Prosecuting Fraudulent Activity:** AB 1574 enhances the ability of DGS to identify and prosecute prime contractors who fraudulently include a DVBE or small business in a bid package in order to have a compliant bid and/or receive a DVBE incentive or small business preference. Existing law limits the filing of civil charges for violations of the commercially useful function requirements to the State Attorney General. While the Attorney General may be able to recover costs of a successful case, the Attorney General has many responsibilities and there have been few, if any, commercially useful function charges filed. Stakeholders believe that the lack of enforcement by the Attorney General is well known and therefore does not serve as a deterrent.

The use of local public prosecutors is already authorized in Military and Veterans Code Section 999.5, for cases related to the submittal of fraudulent DVBE subcontractor pay certifications. AB 1574 applies the same standard for enforcement of violations of the commercially useful function requirements. The bill also deters fraudulent actions and enhances the ability to charge those prime contractors that break the law, by requiring the prime contractor to certify that each DVBE is meaningfully contributing to the fulfillment of the contract.

- 8) **Collaboration in Program Delivery:** California's small business and DVBE procurement programs are divided among a range of departments and agencies.
  - The primary advocate, the California Small Business Advocate, is appointed by the Governor and serves as the Director of the Office of the Small Business Advocate at the Governor's office of Business and Economic Development (GO-Biz). The California Small Business Advocate has a very broad jurisdiction including small business issues within state government, as well as representing the needs of small businesses in the private sector.
  - DGS, the state's lead procurement department, operates the Office of Small Business and DVBE Program Services, which supports a small business and DVBE certification, training, and procurement participation.
  - The Director of the Department of Veterans Affairs (CalVet) appoints a California Disabled Veteran Enterprise Program Advocate, who is responsible for promoting DVBE contracting activities.
  - Each agency is required to designate a small business advocate and a DVBE advocate to help small businesses and DVBEs participate in state procurement activities. Some departments designate the same person to do both positions.

Coordination and collaboration among these entities is challenging, especially since the agency-level small business and DVBE advocates are generally assigned as a collateral duty. Over the last several sessions, the Assembly Jobs Committee has worked to create stronger links and alignment between these different entities. AB 1574 addresses one of these gaps, which also helps to address a finding of the 2019 Audit relating to the lack of capacity of the CalVet Advocate to fully assist underachieving awarding departments in meeting the 3% DVBE procurement participation goal.

In this case, existing law requires the California Small Business Advocate, located at GO-Biz, to collaborate with the DGS Office of Small Business and DVBE Program Services in, among other things, promoting small business certification and undertaking reasonable means to assist state agencies in improving small business participation. There is no similar statutory requirement for the California Small Business Advocate to work with the California Disabled Veteran Enterprise Program Advocate at CalVet.

Given that over 86% of DVBEs are also certified small businesses, the failure to require collaboration could mean state resources are not being fully leveraged. As an example, the California Small Business Advocate oversees a \$17 million small business technical assistance program that funds federally-designated Procurement Technical Assistance Centers to provide training and support services to small businesses interested in government contracting. A closer alignment between the state DVBE and small business procurement programs and the GO-Biz technical assistance centers could be a game changer. .

- 9) **Support for DVBEs from CalVet:** The 2019 State Auditor’s review of DVBE procurement activity in 2017-18 resulted in a number of recommendations calling for revisions to the role of the California DVBE Program Advocate. AB 1574 clarifies the role of the California DVBE Program Advocate as a supporter and facilitator of activities by contracting departments relative to DGS’s administrative role over certification, enforcement, and other related targeted procurement activities.

Key deficiencies identified in the 2019 State Audit included the failure of both CalVet and DGS in “establishing methods and metrics for regularly evaluating the effectiveness of outreach efforts in bringing more DVBEs into the program or addressing specific needs of awarding departments.” AB 1574 adds four specific duties to the role of the CalVet DVBE Program Advocate including:

- a) Assisting awarding departments in identifying DVBEs that can offer services for contracts that department-level procurement staff have historically found to be difficult in reaching through the traditional contract advertising process.
- b) Assisting DVBEs in effectively utilizing certification documentation and the state electronic procurement system to identify the range of products and services they have to offer.
- c) Establishing a method awarding departments can use to monitor the overall DVBE targeted procurement activities.
- d) Establishing and promoting a system to track the effectiveness of promotional activities undertaken by awarding departments.

- 10) **Expanding Procurement Opportunities to More Businesses:** The 2019 State Audit also found that the current DVBE program benefited very few DVBE prime contractors. In 2017-18, 89% of DVBE contract revenues went to just 30 firms in the state. It should be noted however, that at the time of the audit, data on DVBE subcontractors was not available. To help encourage a broader number of small

businesses and DVBEs to participate in state contracting, AB 1574 adds two definitions to the Small Business Procurement Act:

- a) “Limited contracting small business enterprise” means a certified small business, as defined in subdivision (d), has received fewer than five public contracts from the contracting department in the previous two years or has received public contracts from the contracting department totaling less than two hundred fifty thousand dollars (\$250,000) in the previous two years.
- b) “New small business enterprise” means a certified small business, as defined in subdivision (d), that has not received a public contract from the contracting department.

These definitions come from Government Code Section 14110.1, relating to SB 1 transportation funding, which mandated enhanced outreach to small and disadvantaged businesses. In 2019, JEDE held a hearing in which the Director of Caltrans presented their outreach plan and explained how these new definitions helped to expand the number of individual businesses that participated in procurement activities.

**11) 2019 DVBE Program Audit:** In 2017-18, the Joint Legislative Audit Committee approved a program review of the DVBE program. As part of the State Auditor’s review, six awarding departments were visited in order to evaluate the documentation used to support their reported DVBE participation data and to better understand why relatively few DVBE firms are contracting with the state. The State Auditor made similar findings that were also made in a 2014 audit, including that “[n]one of the six awarding departments we reviewed could fully support the value of DVBE contracting activity they reported to General Services during fiscal year 2017–18.” In addition, the audit issued the following findings:

- a) The DVBE program continues to benefit a small percentage of certified DVBEs. In 2017-18, only 133 (8%) of state awards went to certified DVBE prime contractors and 30 of those firms received 89% of the revenues.
- b) The state continues to lack accurate data to measure the program’s success.
- c) Awarding departments, in explaining why so few DVBEs benefit from state contracting opportunities, stated that they have difficulties in finding qualified DVBE firms to meet their specific needs and that DGS’s electronic procurement system is overly complex.
- d) Neither DGS nor CalVet has adequately overseen the DVBE program. Key deficiencies included the failure of both entities in establishing methods and metrics for regularly evaluating the effectiveness of outreach efforts in bringing more DVBEs into the program or addressing specific needs of awarding departments, as well as DGS’s insufficient guidance to awarding departments on how to identify and investigate program abuse.
- e) CalVet does not have the necessary staffing nor access to the necessary data to fully assist underachieving awarding departments in meeting the 3% DVBE procurement participation goal.

Several bills were introduced last session to address the 2019 audit findings. Three of the bills were signed, AB 230 (Brough), AB 1365 (Assembly Veterans Affairs Committee) and SB 588 (Archuleta). AB 1809 (Cervantes) was held in Senate Appropriations. AB 1574 includes a number of the provisions in AB 1809 relating to oversight by CalVet and the challenges state agencies face in meeting the 3% goal. These and other related bills are described in Comment 13.

**12) 2019 Audit Recommendations:** The State Auditor’s review of the 2017-18 DVBE Program included a number of recommendations for increasing the number of individual businesses that participate in

state procurement activities, which includes proactively helping awarding departments identify potential DVBEs to fill potentially difficult to fill contracting opportunities. A selection of the related recommendations from the State Auditor's 2017-2018 review of the DVBE program are listed below.

- a) ***For the Department of Veterans Affairs:*** To ensure that its outreach efforts are effective and result in a greater number of DVBE firms available that can provide the necessary goods and services awarding departments are seeking, CalVet should:
- i) Assess, at least annually, the effectiveness of its past outreach efforts in increasing the number of DVBE firms that become certified.
  - ii) Work with awarding departments to identify the types of goods and services for which they struggle to find a DVBE contractor or subcontractor.
  - iii) Develop an outreach plan to include outreach activities found to be effective in the past, based on its assessment.
  - iv) Develop better tracking of the businesses owned by disabled veterans that attend its outreach events and review certification data to determine whether these businesses obtained their certifications.
  - v) Conduct periodic surveys of businesses owned by disabled veterans that attended its outreach events but chose not to become DVBE certified to determine the reasons for not applying for the certification. The department should use this information to improve its outreach and any other areas of the program.
  - vi) Develop and follow policies and procedures to identify and assist awarding departments that fail to meet, or are at risk of not meeting, the 3% DVBE participation goal, until the Legislature amends the law to transfer its responsibility for assisting underachieving departments to General Services.
- b) ***For DGS:*** To ensure that its outreach efforts are effective and result in a greater number of DVBE firms available that can provide the necessary goods and services awarding departments are seeking, DGS should:
- i) Assess, at least annually, the effectiveness of its past outreach efforts in increasing the number of DVBE firms that become certified.
  - ii) Work with awarding departments to understand why only a few DVBE firms receive a large number of contract awards and take steps to remedy this situation.
  - iii) Work with awarding departments to identify the types of goods and services for which they struggle to find a DVBE contractor or subcontractor.
  - iv) Develop an outreach plan to include outreach activities found to be effective in the past based on its assessment.
  - v) Develop and implement a plan to encourage DVBE firms to participate in leveraged procurement agreements.
  - vi) Develop better tracking of the businesses owned by disabled veterans that attend its outreach events and review certification data to determine whether these businesses obtained their certifications.
  - vii) Conduct periodic surveys of businesses owned by disabled veterans that attended its outreach events but chose not to become DVBE certified to determine the reasons for not applying for

the certification. This information should be used to improve outreach activities and other areas of the program.

- viii) To ensure that awarding departments can effectively identify DVBE firms that provide needed products and services, DGS should:
  - (1) Work with these departments to continue to narrow the codes available to those commonly used by awarding departments to more precisely identify what the state purchases and streamline search criteria in Cal eProcure.
  - (2) Explore other options for making the Cal eProcure search engine more effective for awarding departments.
  - (3) Ensure that by October 2019, departments identify their contracting needs and then post these needs prominently on their websites as a resource for DVBE firms.
  - (4) Continue to provide outreach services to DVBE firms on how to create effective keywords and choose appropriate codes.

**13) Related Legislation:** Below is a list of bills from the current and prior sessions.

- a) **AB 230 (Brough) DVBE Program Accountability:** This bill makes a number of changes to the DVBE procurement program, including, but not limited to, requiring a prime contractor to provide proof of DVBE payments, requiring the awarding agency to review DVBE procurement documents for completeness and accuracy, and requiring DVBE procurement participation commitments be identified in each state contract. Status: Signed by the Governor, Chapter 676, Statutes of 2019.
- b) **AB 177 (Ruskin and V. Manuel Pérez) Enforcement of Small Business Act:** This bill increases and conforms penalties for persons who falsely engage in activities relating to the Small Business Procurement and Contract Act, including small businesses, microbusinesses, and disabled veteran business enterprises. Status: Signed by the Governor, Chapter 342, Statutes of 2010.
- c) **AB 961 (Quirk-Silva and Reyes) Oversight of DVBE Outreach and Subcontractor Payments:** This bill would have implemented recommendations from a 2014 State Auditor Report by tightening the existing monitoring and accountability requirements for state procurement activities related to the disabled veteran business enterprise targeted procurement program. The Assembly Committee on Jobs, Economic Development, and the Economy was the sponsor of this bill. Status: Vetoed by the Governor, 2017. The veto message stated: *“This bill would require the Department of Veteran Affairs to maintain specific records of promotional efforts related to the disabled veteran business enterprise program. The department should continue to review its outreach strategies for this important program within its existing authority. This bill is unnecessary to fulfill such efforts and adds another layer of bureaucratic monitoring.”*
- d) **AB 1218 (Weber) Disabled Veteran Business Enterprise Public Contracts:** This bill would have harmonized the statutory provisions of the currently mandated 3% goal for contracting with disabled veteran business enterprises (DVBEs) and the related reporting requirements. This bill would have also addressed other program deficiencies, as identified by a 2014 audit of the DVBE program. Status: Held on the Suspense File of the Senate Committee on Appropriations, 2015.
- e) **AB 1365 (Assembly Committee on Veterans Affairs) DVBE Notification:** This bill requires an awarding department to notify DVBE subcontractors who have been included within a successful bid. Status: Signed by the Governor, Chapter 689, Statutes of 2019.

- f) ***AB 1554 (Reyes and Quirk-Silva) Reporting of Small Business and DVBE Procurement Participation:*** As passed by this committee, the bill would have required a state department to annually report small business and DVBE participation based on prime and subprime contracts beginning with the 2018-19 contract period. Status: Gutted and used for a different policy purpose. Signed by the Governor, Chapter 380, Statutes of 2018.
- g) ***AB 1635 (Quirk-Silva) Public Contracts and Small Business Participation:*** This bill would have required specified state agencies to establish and achieve a 25% small business participation goal within their annual state contracting and permitting activities. The bill would have also required DGS and the state Small Business Advocate to take reasonable steps to assist state agencies in meeting this goal. The Assembly Committee on Jobs, Economic Development, and the Economy was the sponsor of this bill. Status: Died in the Assembly Committee on Appropriations, 2017.
- h) ***AB 1809 (Cervantes) DVBE Accountability:*** This bill would have modified the role of the Department of Veterans Affairs Small Business Advocate, by enhancing enforcement of commercially useful function violations, and tightens the existing monitoring and accountability requirements for state procurement activities related to the DVBE targeted procurement program. Status: Held in the Senate Committee on Appropriations, 2020.
- i) ***AB 2249 (Ruskin) DVBE Documentation:*** This bill requires applicants for small business or DVBE certification to submit a written declaration, under penalty of perjury, that the information submitted to DGS is true and correct. The bill also authorizes DGS, if it determines that just cause exists, to require the owner of a DVBE or small business to submit the Internal Revenue Service Form 4506-T which would allow DGS to obtain a copy of their tax return. Finally, the bill requires that at least 51% of the stock or voting stock of a disabled veteran business enterprise be unconditionally owned by disabled veterans. Status: Signed by the Governor, Chapter 383, Statutes of 2010.
- j) ***AB 2682 (Wagner) Responsible Small Business and DVBE Contractors:*** This bill would have required a state agency that solicits offers, awards a contract, or consents to subcontracts, under the Small Business Procurement and Contract Act, to do so only with responsible and reliable parties. This bill would have prohibited a state agency from allowing a party to participate in any procurement activity if the party had been suspended, debarred, or otherwise excluded from participation in a state contract. Status: Died in the Assembly Committee on Accountability and Administrative Review, 2014.
- k) ***SB 159 (Nielsen) Measuring Procurement Activity with Disabled Veteran Business Enterprises:*** This bill would have clarified the metrics used when calculating the 3% procurement participation goal for disabled veteran business enterprises. The bill included legislative findings that these changes were declaratory of existing law. Status: Moved to the Assembly Inactive File without further action, 2016.
- l) ***SB 588 (Archuleta) DVBE:*** This bill requires a contracting agency to give a prime contractor that fails to certify that all DVBE subcontractors have been paid, as specified, a reasonable opportunity to comply. If the prime contractor still fails to comply, the contractor is to be suspended from participating in a state contract for five years for a first violation and permanently upon a second violation. Status: Signed by the Governor, Chapter 80, Statutes of 2019.
- m) ***SB 839 (Correa) Reporting on Procurement Activities with DVBEs:*** This bill would have modified reporting requirements for state departments with respect to DVBEs, including contracts where the DVBE acted as the prime and as a subcontractor. Status: Held on the Suspense File of the Senate Committee on Appropriations, 2014.

- n) ***SB 941 (Florez) DVBE Contracting Advocates:*** This bill requires the Department of Veterans Affairs and awarding departments to appoint DVBE advocates to assist in meeting DVBE procurement participation goals. Status: Signed by the Governor, Chapter 666, Statutes of 2002.
  - o) ***SB 1179 (Newman) Suspension from Contracting:*** This bill would have required a contracting agency to give a prime contractor that fails to certify that all DVBE subcontractors have been paid, as specified, a reasonable opportunity to comply. If the prime failed to comply, DGS would have been required to suspend the prime from participating in a state contract for five years for a first violation and permanently upon a second violation. Status: Died without further action in the Assembly Committee on Jobs, Economic Development, and the Economy, 2018.
  - p) ***SB 1180 (Newman) DVBE Records:*** This bill would have required an awarding state department to maintain all records of the information provided by the prime contractor relative to the payment of the DVBE that participated in the performance of the contract. The bill would have also required the awarding department to establish review procedures for those records to ensure the accuracy and completeness of the award amounts and paid amounts reported, including maintaining records in a manner that facilitates access and review by external auditors for a minimum of six years after collection. Status: Died without further action in the Assembly Committee on Jobs, Economic Development, and the Economy, 2018.
  - q) ***SB 1510 (Wright) Commercially Useful Function:*** This bill tightens the bidder requirements for demonstrating that a small business, microbusiness, or DVBE serves a commercially useful function (CUF) in carrying out a state contract. The purpose of the CUF requirement is to prevent a bidder from using a business as a “pass through” or “front” for another business that would otherwise not qualify for the small business or microbusiness preference or DVBE incentive. By meeting the CUF requirements, a bidder may claim a bid preference or enhancement (often both) on competitive state contracts for goods, services, informational technology, and public works. Status: Signed by the Governor, Chapter 421, Statutes of 2012.
- 14) **Double Referral:** The Assembly Committee on Rules has referred this measure to the Assembly Committee on Jobs, Economic Development, and the Economy and to the Assembly Committee on Accountability and Administrative Review (AAR). Should this measure pass this committee, it will be referred to AAR for further policy consideration.

## REGISTERED SUPPORT / OPPOSITION:

### Support

California Asian Pacific Chamber of Commerce (CAPCC)  
 Coalition for Small and Disabled Veteran Businesses  
 Flasher Barricade Association  
 Silicon Valley Consulting Group

### Opposition

None on File

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