

AMENDED IN ASSEMBLY APRIL 6, 2021
AMENDED IN ASSEMBLY MARCH 25, 2021
CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1574

**Introduced by Committee on Jobs, Economic Development, and
the Economy**

March 4, 2021

An act to amend Sections ~~12908.3~~ 12098.3, 14837, 14842.5, 14845, and 14846 of the Government Code, and to amend Sections 999.5, 999.9, 999.10, 999.11, and 999.12 of the Military and Veterans Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1574, as amended, Committee on Jobs, Economic Development, and the Economy. Public contracts: small business liaisons and advocates and disabled veteran business enterprises.

The Small Business Procurement and Contract Act requires the Director of General Services and the heads of other state agencies that enter into contracts for the provision of goods, services, and information technology and for the construction of state facilities to establish goals for the participation of small businesses in these contracts, to provide for small business preferences in the award of these contracts, to give special consideration and special assistance to small businesses, and, whenever possible, to make awards to small businesses, as specified. (~~PU 20130AB—173498AMD~~)

Existing law requires each state agency to consolidate its existing staff functions that relate to contract opportunities for small businesses into a single point of contact for small businesses, and to designate a

small business advocate as a liaison to small business suppliers. Existing law requires each state agency that significantly regulates small business or significantly impacts small business to designate at least one individual who shall serve as a small business liaison for the agency. Existing law requires the Director of the Office of Small Business Advocate to, among other duties, seek the assistance and cooperation of all state agencies and departments providing services to, or affecting, small business, including the small business liaison, and maintain, publicize, and distribute an annual list of persons serving as small business ombudspersons throughout state government. Existing law also requires the small business advocate to identify potential certified small business and certified disabled veteran business enterprise (DVBE) subcontractors and potential subcontracting opportunities, as well as establish a California multiple award schedule program, as provided.

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 DVBE participation incentive to bidders, which all state agencies are required to use when awarding contracts. That law requires the Department of Veterans Affairs to carry out specified duties relating to the program, including by maintaining complete records of its promotional efforts. That law requires the Secretary of the Department of Veterans Affairs to appoint the California Disabled Veteran Business Enterprise Program Advocate and for that advocate to carry out certain duties. That law requires each awarding department, as defined, to appoint an agency Disabled Veteran Business Enterprise Program Advocate to carry out certain duties, including by meeting regularly with the California Disabled Veteran Business Enterprise Program Advocate and contract and procurement staffs of their departments to disseminate information about the California Disabled Veteran Business Enterprise Program.

This bill would enact the Small Business and Disabled Veteran Business Enterprise Act of 2021, which would require the Director of the Office of Small Business Advocate to maintain, publicize, and distribute an annual list of persons serving as small business liaisons throughout state government. The bill would require the Director of the Office of Small Business Advocate to collaborate with the California Disabled Veteran Business Enterprise Program Advocate regarding the

implementation of the California Disabled Veteran Business Enterprise Program, as provided. The bill would also require the small business advocate to identify potential certified small business and certified DVBE subcontracting opportunities, as well as assist certified small businesses and certified DVBEs to participate in the California multiple award schedule program. The bill would define, for purposes of the Small Business Procurement and Contract Act, limited contracting small business enterprise and new small business enterprise. The bill would make conforming changes to that effect.

The bill would change the duties the California Disabled Veteran Business Enterprise Program Advocate is required to carry out, including by requiring that advocate to establish and promote a system to track the effectiveness of promotional activities undertaken by state agencies. The bill would remove the requirement that an agency Disabled Veteran Business Enterprise Advocate meet regularly with the California Disabled Veteran Business Enterprise Program Advocate and would impose additional duties on an agency Disabled Veteran Business Enterprise Advocate when that advocate meets with the contract and procurement staffs of their departments. The bill would make conforming changes to that effect.

Existing law makes it a crime to fraudulently represent that a commercially useful function is being performed by a ~~DVBE~~ DVBE, *certified small business, or microbusiness* in order to obtain or retain a bid preference or state contract. Under existing law, a violation of this provision, in addition to other penalties, may result in any existing contract between the contractor and the awarding department being terminated and payment set off by penalties and costs to the state, as specified. Existing law requires that a person making a bid or offer to perform a contract provide specified information in the bid or offer, including the name and the location of the place of business of each subcontractor certified as a DVBE.

This bill would authorize any public prosecutor to bring a civil action for a violation involving a knowing fraudulent representation that a commercially useful function is being performed by a ~~DVBE~~ DVBE, *certified small business, or microbusiness* in order to obtain or retain a bid preference for a state contract. The bill would prohibit the public prosecutor, other than the Attorney General, from bringing a civil action for that violation if the Department of General Services has concluded an administrative action for the violation. The bill would require the bid or offer to include the DVBE certification number, contact

information of the subcontractors certified as DVBEs, and a certification, under penalty of perjury, that the work to be done by each subcontractor serves a commercially useful function, as specified. By expanding the scope of the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. This act shall be known and may be cited as the
2 Small Business and Disabled Veteran Business Enterprise Act of
3 2021.

4 SEC. 2. (a) California has a 30-year history of using state
5 contracting to support business development within targeted
6 business populations. Given the economic devastation as a result
7 of the COVID-19 pandemic on small businesses, including
8 veteran-owned businesses, it is important that the state aligns all
9 of its resources to assist these businesses in recovery.

10 (b) State law sets an annual 3-percent Disabled Veteran Business
11 Enterprise (DVBE) procurement participation goal, and a 2006
12 executive order sets a 25-percent goal for small businesses and
13 microbusinesses within state agencies, departments, boards, and
14 commissions.

15 (c) While encouraging small business participation furthers the
16 state’s interest in having a robust small business sector, the Small
17 Business Procurement and Contract Act also establishes the policy
18 foundation for DVBE contract participation. The DVBE
19 procurement program is intended to both recognize the sacrifices
20 of California’s disabled military veterans, as well as address the
21 special needs of disabled veterans seeking rehabilitation and
22 training through entrepreneurship.

23 (d) To assist state agencies in reaching these targeted
24 procurement participation goals, state law authorizes a procurement
25 preference for bids using a certified small business or DVBE as a

1 prime or subcontractor and a streamlined alternative procurement
2 process for smaller size contracts that are between \$5,000 and
3 \$250,000, whereby an awarding department can contract directly
4 with a certified small business or DVBE after comparing the bid
5 against two other similar businesses.

6 (e) The state also administers a DVBE incentive which allows
7 an awarding department to set an incentive percentage for a
8 particular transaction based upon the department's business strategy
9 to achieve their annual 3-percent DVBE procurement participation
10 goal. Awarding departments are also required to recognize a
11 5-percent preference in cases where a bid includes a certified small
12 business.

13 (f) In the state's experience, a majority of DVBEs are smaller
14 size firms with 75.4 percent having dual certifications as a DVBE
15 and microbusiness and 9.6 percent having dual certifications as a
16 DVBE and small business. The remaining 15 percent of DVBEs
17 operate with only a single DVBE certification.

18 SEC. 3. Section 12098.3 of the Government Code is amended
19 to read:

20 12098.3. (a) The Small Business Advocate shall be appointed
21 by, and shall serve at the pleasure of, the Governor.

22 (b) The Governor shall appoint the employees who are needed
23 to accomplish the purposes of this article.

24 (c) The duties and functions of the advocate shall include all of
25 the following:

26 (1) Serve as the principal advocate in the state on behalf of small
27 businesses, including, but not limited to, advisory participation in
28 the consideration of all legislation and administrative regulations
29 that affect small businesses, and advocacy on state policy and
30 programs related to small businesses.

31 (2) Represent the views and interests of small businesses before
32 other state agencies whose policies and activities may affect small
33 business.

34 (3) Enlist the cooperation and assistance of public and private
35 agencies, businesses, and other organizations in disseminating
36 information about the programs and services provided by state
37 government that are of benefit to small businesses, and information
38 on how small businesses can participate in, or make use of, those
39 programs and services.

- 1 (4) Consult with experts and authorities in the fields of small
2 business investment, venture capital investment, and commercial
3 banking and other comparable financial institutions involved in
4 the financing of business, and with individuals with regulatory,
5 legal, economic, or financial expertise, including members of the
6 academic community, and individuals who generally represent the
7 public interest.
- 8 (5) Seek the assistance and cooperation of all state agencies and
9 departments providing services to, or affecting, small business,
10 including the small business liaison designated pursuant to Section
11 11148.5, to ensure coordination of state efforts. The advocate shall
12 fulfill this duty by, among other activities, maintaining, publicizing,
13 and distributing an annual list of persons serving as small business
14 liaisons throughout the state.
- 15 (6) Receive and respond to complaints from small businesses
16 concerning the actions of state agencies and the operative effects
17 of state laws and regulations adversely affecting those businesses.
- 18 (7) Counsel small businesses on how to resolve questions and
19 problems concerning the relationship of small business to state
20 government.
- 21 (8) Collaborate with the Office of Small Business and Disabled
22 Veteran Business Enterprise Services in their activities under the
23 Small Business Procurement and Contract Act (Chapter 6.5
24 (commencing with Section 14835) of Part 5.5), including, but not
25 limited to, promoting small business certification and undertaking
26 reasonable means to assist state agencies in improving small
27 business participation. Among other activities, the advocate shall
28 maintain, publicize, and distribute an annual list of persons serving
29 as a small business advocate, designated pursuant to Section 14846,
30 throughout state government.
- 31 (9) Collaborate with the California Disabled Veteran Enterprise
32 Program Advocate, appointed pursuant to Section 999.11 of the
33 Military and Veterans Code, regarding the implementation of the
34 California Disabled Veteran Business Enterprise Program (Article
35 6 (commencing with Section 999) of Chapter 6 of Division 4 of
36 the Military and Veterans Code), including, but not limited to,
37 promoting disabled veteran business enterprise certification to
38 veteran entrepreneurs and veteran-owned small businesses and
39 undertaking reasonable means to assist state agencies in improving
40 small business and disabled business enterprise procurement

1 participation. The advocate shall fulfill this duty by, among other
2 activities, publicizing the annual list of persons serving as a
3 Disabled Veteran Business Enterprise Program Advocate,
4 designated pursuant to Section 999.12 of the Military and Veterans
5 Code, throughout the state.

6 SEC. 4. Section 14837 of the Government Code is amended
7 to read:

8 14837. As used in this chapter:

9 (a) “Department” means the Department of General Services.

10 (b) “Director” means the Director of General Services.

11 (c) “Manufacturer” means a business that meets both of the
12 following requirements:

13 (1) It is primarily engaged in the chemical or mechanical
14 transformation of raw materials or processed substances into new
15 products.

16 (2) It is classified between Codes 31 to 33, inclusive, of the
17 North American Industry Classification System.

18 (d) (1) (A) “Small business” means an independently owned
19 and operated business that is not dominant in its field of operation,
20 the principal office of which is located in California, the officers
21 of which are domiciled in California, and which, together with
22 affiliates, has 100 or fewer employees, and average annual gross
23 receipts of ten million dollars (\$10,000,000) or less over the
24 previous three years, or is a manufacturer, as defined in subdivision
25 (c), with 100 or fewer employees. Commencing January 1, 2019,
26 the average annual gross receipts threshold shall be fifteen million
27 dollars (\$15,000,000).

28 (B) For the purposes of public works contracts, as defined in
29 Section 1101 of the Public Contract Code, and engineering
30 contracts, as described in Section 4525, for public works projects,
31 awarded through competitive bids or otherwise, “small business”
32 means an independently owned and operated business that is not
33 dominant in its field of operation, the principal office of which is
34 located in California, the officers of which are domiciled in
35 California, and which, together with affiliates, has 200 or fewer
36 employees, and average annual gross receipts of thirty-six million
37 dollars (\$36,000,000) or less over the previous three years. This
38 subparagraph shall become operative on January 1, 2019.

39 (2) “Microbusiness” is a small business which, together with
40 affiliates, has average annual gross receipts of two million five

1 hundred thousand dollars (\$2,500,000) or less over the previous
2 three years, or is a manufacturer, as defined in subdivision (c),
3 with 25 or fewer employees. Commencing January 1, 2019, the
4 average annual gross receipts threshold shall be five million dollars
5 (\$5,000,000).

6 (3) (A) The director shall conduct a biennial review of the
7 average annual gross receipt levels specified in this subdivision
8 and may adjust that level to reflect changes in the California
9 Consumer Price Index for all items.

10 (B) Commencing January 1, 2019, the director shall conduct
11 the biennial review and make that adjustment. To reflect unique
12 variations or characteristics of different industries, the director
13 may establish, to the extent necessary, either higher or lower
14 qualifying standards than those specified in this subdivision, or
15 alternative standards based on other applicable criteria.

16 (4) Standards applied under this subdivision shall be established
17 by regulation, in accordance with Chapter 3.5 (commencing with
18 Section 11340) of Part 1 of Division 3 of Title 2, and shall preclude
19 the qualification of businesses that are dominant in their industry.
20 In addition, the standards shall provide that the certified small
21 business or microbusiness shall provide goods or services that
22 contribute to the fulfillment of the contract requirements by
23 performing a commercially useful function, as defined below:

24 (A) A certified small business or microbusiness is deemed to
25 perform a commercially useful function if the business does all of
26 the following:

27 (i) Is responsible for the execution of a distinct element of the
28 work of the contract.

29 (ii) Carries out its obligation by actually performing, managing,
30 or supervising the work involved.

31 (iii) Performs work that is normal for its business services and
32 functions.

33 (iv) Is responsible, with respect to products, inventories,
34 materials, and supplies required for the contract, for negotiating
35 price, determining quality and quantity, ordering, installing, if
36 applicable, and making payment.

37 (v) Is not further subcontracting a portion of the work that is
38 greater than that expected to be subcontracted by normal industry
39 practices.

1 (B) A contractor, subcontractor, or supplier will not be
2 considered to perform a commercially useful function if the
3 contractor's, subcontractor's, or supplier's role is limited to that
4 of an extra participant in a transaction, contract, or project through
5 which funds are passed in order to obtain the appearance of small
6 business or microbusiness participation.

7 (e) "Disabled veteran business enterprise" means an enterprise
8 that has been certified as meeting the qualifications established by
9 paragraph (7) of subdivision (b) of Section 999 of the Military and
10 Veterans Code.

11 (f) "Limited contracting small business enterprise" means a
12 certified small business, as defined in subdivision (d), that has
13 received fewer than five public contracts from the contracting
14 department in the previous two years or has received public
15 contracts from the contracting department totaling less than two
16 hundred fifty thousand dollars (\$250,000) in the previous two
17 years.

18 (g) "New small business enterprise" means a certified small
19 business, as defined in subdivision (d), that has not received a
20 public contract from the contracting department in the previous
21 two years.

22 *SEC. 5. Section 14842.5 of the Government Code is amended*
23 *to read:*

24 14842.5. (a) It shall be unlawful for a person to do any of the
25 following:

26 (1) Knowingly and with intent to defraud, fraudulently obtain,
27 retain, attempt to obtain or retain, or aid another in fraudulently
28 obtaining or retaining or attempting to obtain or retain, certification
29 as a small business or microbusiness enterprise for the purposes
30 of this chapter.

31 (2) Willfully and knowingly make a false statement with the
32 intent to defraud, whether by affidavit, report, or other
33 representation, to a state official or employee for the purpose of
34 influencing the certification or denial of certification of any entity
35 as a small business or microbusiness enterprise.

36 (3) Willfully and knowingly obstruct, impede, or attempt to
37 obstruct or impede, any state official or employee who is
38 investigating the qualifications of a business entity that has
39 requested certification as a small business or microbusiness
40 enterprise.

1 (4) Knowingly and with intent to defraud, fraudulently obtain,
2 attempt to obtain, or aid another person in fraudulently obtaining
3 or attempting to obtain, public moneys, contracts, or funds
4 expended under a contract, that are awarded by any state agency,
5 department, officer, or other state governmental agency, to which
6 the person is not entitled under this chapter.

7 (5) Knowingly and with intent to defraud, fraudulently represent
8 certified small business or microbusiness participation in order to
9 obtain or retain a bid preference or a state contract.

10 (6) Knowingly and with intent to defraud, fraudulently represent
11 that a commercially useful function is being performed by a
12 certified small business or microbusiness in order to obtain or
13 retain a bid preference or a state contract.

14 (7) Willfully and knowingly make or subscribe to any statement,
15 declaration, or other document that is fraudulent or false as to any
16 material matter, whether or not that falsity or fraud is committed
17 with the knowledge or consent of the person authorized or required
18 to present the declaration, statement, or document.

19 (8) Willfully and knowingly aid or assist in, or procure, counsel,
20 or advise, the preparation or presentation of a declaration,
21 statement, or other document that is fraudulent or false as to any
22 material matter, regardless of whether that falsity or fraud is
23 committed with the knowledge or consent of the person authorized
24 or required to present the declaration, statement, or document.

25 (9) Establish, or knowingly aid in the establishment of, or
26 exercise control over, a firm found to have violated any provision
27 of paragraphs (1) to (8), inclusive.

28 (b) (1) Any person who is found by the department to have
29 violated any of the provisions of subdivision (a) is subject to a
30 civil penalty of not less than ten thousand dollars (\$10,000) nor
31 more than thirty thousand dollars (\$30,000) for the first violation,
32 and a civil penalty of not less than thirty thousand dollars (\$30,000)
33 nor more than fifty thousand dollars (\$50,000) for each additional
34 or subsequent violation.

35 (2) A person who violates any of the provisions of subdivision
36 (a) shall pay all costs incurred by the awarding department and
37 the Department of General Services for any investigations that led
38 to the finding of the violation. Costs incurred shall include, but
39 are not limited to, costs and attorney's fees paid by the awarding
40 state agency or the department related to hearings and court

1 appearances. All payments to the state pursuant to this paragraph
2 shall be deposited in the fund or funds out of which payments on
3 the contract involved were made, except payments to the
4 department shall be deposited in the Service Revolving Fund.

5 (c) The department shall revoke the small business or
6 microbusiness certification, and the disabled veteran business
7 enterprise certification if the business has both certifications, of
8 any person that violates subdivision (a) for a period of not less
9 than five years, and shall, in addition to the penalties provided for
10 in subdivision (b), suspend the person from bidding on, or
11 participating as a contractor, a subcontractor, or a supplier in, any
12 state contract or project for a period of not less than three years
13 nor more than 10 years. However, for an additional or subsequent
14 violation, the period of certification revocation or suspension shall
15 be extended for a period of up to three years. The certification
16 revocation shall apply to the principals of the business and any
17 subsequent businesses formed by one or more of those principals.
18 Any business or person who fails to satisfy any of the penalties
19 imposed pursuant to paragraphs (1) and (2) of subdivision (b) shall
20 be prohibited from further contracting with the state until the
21 penalties are satisfied.

22 (d) If a contractor, subcontractor, supplier, subsidiary, or affiliate
23 thereof, has been found by the department to have violated
24 subdivision (a) and that violation occurred within three years of
25 another violation of subdivision (a) found by the department, the
26 department shall prohibit that contractor, subcontractor, supplier,
27 subsidiary, or affiliate thereof, from entering into a state project
28 or state contract and from further bidding to a state entity, and
29 from being a subcontractor to a contractor for a state entity, and
30 from being a supplier to a state entity.

31 (e) (1) In addition to the penalties imposed by this section, if
32 a contractor is found to be in violation of paragraph (6) of
33 subdivision (a), any existing contract between that contractor and
34 any awarding department may be terminated at the discretion of
35 the awarding state agency, and, where payment to the contractor
36 is made directly by the state agency, the agency shall set off
37 penalties and costs due to the state against any payments due to
38 that contractor. In the event that the contracting state agency has
39 forwarded the contract and invoices to the Controller for payment,
40 the state agency shall reduce the amount due to the contractor as

1 reflected in the claim schedule submitted to the Controller by the
2 amount of the penalties and costs due the state. In addition, with
3 regard to any penalties and costs due to the state that the state
4 agency has not accounted for by either a set off against payments
5 due to the contractor or a reduction reflected in the claim schedule
6 submitted to the Controller, to the extent that the Controller is
7 making payments to the contractor on behalf of any state agency,
8 the Controller shall set off penalties and costs due against any
9 invoices due to the contractor from any other contract awarded to
10 the contractor.

11 (2) (A) *The awarding department shall report all alleged*
12 *violations of this section to the Department of General Services.*
13 *After any review and investigation it deems necessary, the*
14 *Department of General Services shall subsequently report all*
15 *allegations that have sufficient grounds to the Attorney General*
16 *who shall determine whether to bring a civil action against any*
17 *person or firm for a violation of this section. However, the*
18 *Department of General Services may pursue administrative action*
19 *and administrative penalties irrespective of whether the Attorney*
20 *General chooses to bring a civil action.*

21 (B) *For alleged violations of paragraph (6) of subdivision (a),*
22 *a civil action may be brought by any public prosecutor in the name*
23 *of the people of the State of California and the penalty imposed*
24 *shall be enforceable as a civil judgment. A person who violates*
25 *paragraph (6) of subdivision (a) shall be subject to civil penalties*
26 *provided for in subdivision (b), including all costs and attorney's*
27 *fees incurred by the public prosecutor and the costs incurred by*
28 *the awarding department and the Department of General Services.*
29 *A public prosecutor, other than the Attorney General, shall not*
30 *bring an action for a civil penalty under this paragraph if the*
31 *Department of General Services has concluded an administrative*
32 *action for the same violation.*

33 (2)

34 (3) For purposes of this section:

35 (A) "Awarding state agency" means any state agency,
36 department, governmental entity, or other officer or entity
37 empowered by law to enter into contracts on behalf of the State
38 of California.

39 (B) "Contractor" means any person or persons, firm, partnership,
40 corporation, or combination thereof who submits a bid and enters

1 into a contract with a representative of a state agency, department,
2 governmental entity, or other officer empowered by law to enter
3 into contracts on behalf of the State of California.

4 ~~SEC. 5.~~

5 *SEC. 6.* Section 14845 of the Government Code is amended
6 to read:

7 14845. Using existing resources, the Department of General
8 Services' small business advocate shall, at a minimum, provide
9 the following services:

10 (a) Assist certified small businesses and certified disabled
11 veteran business enterprises by providing information regarding
12 all of the following:

13 (1) Identification of potential certified small business and
14 certified disabled veteran business enterprise subcontracting
15 opportunities.

16 (2) Solicitation protest procedures and timelines.

17 (3) Prompt payment procedures.

18 (b) Using existing resources, develop and maintain an outreach
19 and education program to assist certified small businesses and
20 certified disabled veteran business enterprises to participate in the
21 California multiple award schedule program. The department shall
22 actively promote the availability of certified small business and
23 certified disabled veteran business enterprise suppliers to deliver
24 or provide a broad range of goods and services to governmental
25 agencies through their participation in the California multiple
26 award schedule program established pursuant to Chapter 2
27 (commencing with Section 10290) of Part 2 of Division 2 of the
28 Public Contract Code and other types of contracts established by
29 state agencies for repetitively used and commonly needed goods
30 and services.

31 (c) Whenever the director consolidates the needs of multiple
32 state agencies and establishes a contract for repetitively purchased
33 or commonly needed goods or services, the director shall both
34 encourage bidders to utilize certified small business and certified
35 disabled veteran business enterprise suppliers and subcontractors,
36 and utilize multiple award methods whenever practicable to further
37 ensure that a fair proportion of needed goods and services are
38 obtained from certified small businesses and certified disabled
39 veteran business enterprises.

1 (d) Using existing resources, establish a training and
2 development program for acquisition professionals, including
3 methods for structuring solicitations to enhance the participation
4 of certified small businesses and certified disabled veteran business
5 enterprises in state contracting.

6 (e) Using existing resources, the department shall establish a
7 recognition and awards program for state employees who make
8 an outstanding contribution to the state’s overall effort to increase
9 the level of certified small business participation in state
10 contracting or certified disabled veteran business enterprise
11 participation in state contracting.

12 (f) Prepare, and make available to the public, a directory of
13 certified small business and certified disabled veteran business
14 enterprise suppliers.

15 (g) In its review of state agency acquisitions, the department,
16 as applicable, shall identify areas where improvements in the level
17 of participation of certified small businesses and certified disabled
18 veteran business enterprises in state contracting can be achieved.

19 ~~SEC. 6.~~

20 *SEC. 7.* Section 14846 of the Government Code is amended
21 to read:

22 14846. (a) (1) Using existing resources, each state agency
23 shall consolidate its existing staff functions that relate to contract
24 opportunities for small business into a single point of contact for
25 small businesses, and designate a small business advocate as a
26 liaison to small business suppliers.

27 (2) Each small business advocate shall, at a minimum, provide
28 for both of the following:

29 (A) Make information regarding pending solicitations available
30 to, and consider offers from, California small business suppliers
31 capable of meeting the state’s business need, and who have
32 registered with the state for this purpose.

33 (B) Ensure that payments due on a contract with a small business
34 are made promptly, as provided for in Chapter 4.5 (commencing
35 with Section 927) of Part 3 of Division 3.6 of Title 1.

36 (3) This subdivision shall not apply to state agencies whose
37 contracting expenditures total less than one hundred thousand
38 dollars (\$100,000) annually.

39 (b) Prior to placing orders under the California multiple awards
40 schedule program, state agencies shall first consider offers from

1 small businesses that have established multiple award schedules
2 whenever practicable.

3 (c) State agencies shall identify and implement innovative
4 acquisition operating processes, including payment processes, and
5 strategies for small business participation. To maximize the
6 benefits, state agencies shall actively share information about these
7 innovative processes with other state agencies.

8 (d) State agencies shall prepare solicitations, and any related
9 bid submission requirements, in a manner consistent with the scope,
10 complexity, and anticipated cost of the acquisition. If appropriate,
11 state agencies shall provide bidders with simplified and streamlined
12 tools and methods for responding to solicitations that allow bidders
13 to efficiently, expeditiously, and cost-effectively respond to the
14 contracting opportunity.

15 ~~SEC. 7.~~

16 *SEC. 8.* Section 999.5 of the Military and Veterans Code is
17 amended to read:

18 999.5. (a) The administering agency for the California Disabled
19 Veteran Business Enterprise Program is the Department of General
20 Services, except in the case of contracts for professional bond
21 services. The Department of General Services shall consult with
22 the California Disabled Veteran Business Enterprise Program
23 Advocate, appointed by the Secretary of the Department of
24 Veterans Affairs pursuant to Section 999.11, on all matters relating
25 to the California Disabled Veteran Business Enterprise Program.
26 The Director of General Services shall adopt written policies and
27 guidelines establishing a uniform process for state contracting that
28 would provide a disabled veteran business enterprise participation
29 incentive to bidders. The incentive program shall be used by all
30 state agencies when awarding contracts.

31 (b) The Department of Veterans Affairs shall do all of the
32 following, as further described in Section 999.11:

33 (1) Establish a method of monitoring adherence to the goals
34 specified in Sections 999.1 and 999.2.

35 (2) Promote the California Disabled Veteran Business Enterprise
36 Program to the fullest extent possible.

37 (3) Maintain complete records of its promotional efforts.

38 (4) Establish a system to track the effectiveness of its efforts to
39 promote the California Disabled Veteran Business Enterprise
40 Program, which shall include regular, periodic surveys of newly

1 certified disabled veteran business enterprises to determine how
2 they learned of the program, why they became certified, and what
3 their experience with awarding departments has been.

4 (c) An awarding department shall not credit toward the
5 department's 3-percent goal state funds expended on a contract
6 with a disabled veteran business enterprise that is not certified at
7 the time of the award or does not meet and maintain the
8 certification requirements.

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

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

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

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

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

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

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

39 (g) After being awarded a contract, the prime contractor shall
40 use the disabled veteran business enterprise subcontractors or

1 suppliers proposed in the bid or proposal to the state unless a
2 substitution is requested and approved. The prime contractor shall
3 request the substitution in writing to the awarding department and
4 receive approval from both the awarding department and the
5 Department of General Services in writing prior to the
6 commencement of any work by the proposed subcontractor or
7 supplier. A substitution pursuant to this subdivision shall
8 additionally comply with regulations adopted by the Department
9 of General Services.

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

12 ~~SEC. 8.~~

13 *SEC. 9.* Section 999.9 of the Military and Veterans Code is
14 amended to read:

15 999.9. (a) It shall be unlawful for a person to:

16 (1) Knowingly and with intent to defraud, fraudulently obtain,
17 retain, attempt to obtain or retain, or aid another in fraudulently
18 obtaining or retaining or attempting to obtain or retain, certification
19 as a disabled veteran business enterprise for the purpose of this
20 article.

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

26 (3) Willfully and knowingly obstruct, impede, or attempt to
27 obstruct or impede, any state official or employee who is
28 investigating the qualifications of a business entity that has
29 requested certification as a disabled veteran business enterprise.

30 (4) Knowingly and with intent to defraud, fraudulently obtain,
31 attempt to obtain, or aid another person in fraudulently obtaining
32 or attempting to obtain, public moneys, contracts, or funds
33 expended under a contract, that are awarded by any state agency,
34 department, officer, or other state governmental agency, to which
35 the person is not entitled under this article.

36 (5) Knowingly and with intent to defraud, fraudulently represent
37 participation of a disabled veteran business enterprise in order to
38 obtain or retain a bid preference or a state contract.

39 (6) Knowingly and with intent to defraud, fraudulently represent
40 that a commercially useful function is being performed by a

1 disabled veteran business enterprise in order to obtain or retain a
2 bid preference or a state contract.

3 (7) Willfully and knowingly make or subscribe to any statement,
4 declaration, or other document that is fraudulent or false as to any
5 material matter, whether or not that falsity or fraud is committed
6 with the knowledge or consent of the person authorized or required
7 to present the declaration, statement, or document.

8 (8) Willfully and knowingly aid or assist in, or procure, counsel,
9 or advise, the preparation or presentation of a declaration,
10 statement, or other document that is fraudulent or false as to any
11 material matter, regardless of whether that falsity or fraud is
12 committed with the knowledge or consent of the person authorized
13 or required to present the declaration, statement, or document.

14 (9) Willfully and knowingly fail to file any declaration or notice
15 with the awarding agency that is required by Section 999.2.

16 (10) Establish, or knowingly aid in the establishment of, or
17 exercise control over, a firm found to have violated any of
18 paragraphs (1) to (9), inclusive.

19 (b) A person who violates any of the provisions of subdivision
20 (a) shall be guilty of a misdemeanor punishable by imprisonment
21 in the county jail not exceeding six months or by a fine not
22 exceeding one thousand dollars (\$1,000), or by both. In addition,
23 the person shall be liable for a civil penalty of not less than ten
24 thousand dollars (\$10,000) nor more than thirty thousand dollars
25 (\$30,000) for the first violation, and a civil penalty of not less than
26 thirty thousand dollars (\$30,000) nor more than fifty thousand
27 dollars (\$50,000) for each additional or subsequent violation. A
28 defendant who violates any of the provisions of subdivision (a)
29 shall pay all costs and attorney’s fees incurred by the plaintiff in
30 a civil action brought pursuant to this section, including costs
31 incurred by the awarding department and the Department of
32 General Services.

33 (c) (1) The Department of General Services shall suspend any
34 person who violates subdivision (a) from bidding on, or
35 participating as either a contractor, subcontractor, or supplier in,
36 any state contract or project for a period of not less than three years
37 and not more than 10 years, and if certified as a disabled veteran
38 business enterprise, the department shall revoke the business’s
39 certification, and the small business or microbusiness enterprise
40 certification if the business has both certifications, for a period of

1 not less than five years. An additional or subsequent violation shall
2 extend the periods of suspension and revocation for a period of
3 not less than 10 years. The suspension and revocation of
4 certification shall apply to the principals of the business and any
5 subsequent business formed or financed by, or affiliated with, one
6 or more of those principals.

7 (2) A person that violates any of the provisions of subdivision
8 (a) shall pay all costs incurred by the awarding department and
9 the Department of General Services for any investigations that led
10 to the finding of the violation. Costs incurred shall include, but
11 are not limited to, costs and attorney's fees paid by the department
12 or the Department of General Services related to hearings and
13 court appearances.

14 (3) The Department of General Services shall prohibit any
15 business or person who fails to satisfy any of the penalties, costs,
16 and attorney's fees imposed pursuant to subdivisions (b) and (c)
17 from further contracting with the state until all of the penalties,
18 costs, and attorney's fees are satisfied.

19 (d) In addition to the penalties imposed by this section, if a
20 contractor is found to be in violation of paragraph (6) of
21 subdivision (a), any existing contract between that contractor and
22 any awarding department may be terminated at the discretion of
23 the awarding department, and, where payment to the contractor is
24 made directly by the state agency, the agency shall set off penalties
25 and costs due to the state against any payments due to that
26 contractor. In the event that the contracting state agency has
27 forwarded the contract and invoices to the Controller for payment,
28 the state agency shall reduce the amount due to the contractor as
29 reflected in the claim schedule submitted to the Controller by the
30 amount of the penalties and costs due the state. In addition, with
31 regard to any penalties and costs due to the state that the state
32 agency has not accounted for by either a set off against payments
33 due to the contractor or a reduction reflected in the claim schedule
34 submitted to the Controller, to the extent that the Controller is
35 making payments to the contractor on behalf of any state agency,
36 the Controller shall set off penalties and costs due against any
37 invoices due to the contractor from any other contract awarded to
38 the contractor.

39 (e) (1) The awarding department shall report all alleged
40 violations of this section to the Department of General Services.

1 After any review and investigation it deems necessary, the
2 Department of General Services shall subsequently report all
3 allegations that have sufficient grounds to the Attorney General
4 who shall determine whether to bring a civil action against any
5 person or firm for a violation of this section. However, the
6 Department of General Services may pursue administrative action
7 and administrative penalties irrespective of whether the Attorney
8 General chooses to bring a civil action.

9 (2) For alleged violations of paragraph (6) of subdivision (a), a
10 civil action may be brought by any public prosecutor in the name
11 of the people of the State of California and the penalty imposed
12 shall be enforceable as a civil judgment. A person who violates
13 paragraph (6) of subdivision (a) shall be subject to civil penalties
14 provided for in subdivision (b), including all costs and attorney's
15 fees incurred by the public prosecutor and the costs incurred by
16 the awarding department and the Department of General Services.
17 A public prosecutor, other than the Attorney General, shall not
18 bring an action for a civil penalty under this paragraph if the
19 Department of General Services has concluded an administrative
20 action for the same violation.

21 (f) The Department of General Services shall monitor the status
22 of all reported violations and shall maintain and make available
23 to all state departments a central listing of all firms and persons
24 who have been determined to have committed violations resulting
25 in suspension.

26 (g) No awarding department shall enter into any contract with
27 any person suspended for violating this section during the period
28 of the person's suspension. No awarding department shall award
29 a contract to any contractor utilizing the services of any person as
30 a subcontractor suspended for violating this section during the
31 period of the person's suspension.

32 (h) The awarding department shall check the central listing
33 provided by the Department of General Services to verify that the
34 person or contractor to whom the contract is being awarded, or
35 any person being utilized as a subcontractor or supplier by that
36 person or contractor, is not under suspension for violating this
37 section.

38 ~~SEC. 9.~~

39 *SEC. 10.* Section 999.10 of the Military and Veterans Code is
40 amended to read:

1 999.10. (a) An awarding department taking bids in connection
2 with the award of a contract shall provide, in the general conditions
3 under which bids will be received, that a person making a bid or
4 offer to perform a contract shall, in the bid or offer, set forth the
5 following information:

6 (1) The name, disabled veteran business enterprise certification
7 number, contact information, and the location of the place of
8 business of each subcontractor certified as a disabled veteran
9 business enterprise who will perform work or labor or render
10 service to the prime contractor in connection with the performance
11 of the contract and who will be used by the prime contractor to
12 fulfill disabled veteran business enterprise participation goals.

13 (2) The portion of work that will be done by each subcontractor
14 under paragraph (1). Except in cases of emergency when a contract
15 is necessary for the immediate preservation of the public health,
16 welfare, or safety, or protection of state property, the prime
17 contractor shall list only one subcontractor for each portion of
18 work as is defined by the prime contractor in the contractor's bid
19 or offer.

20 (3) A certification, signed under penalty of perjury, that the
21 portion of work that will be done by each subcontractor under
22 paragraph (1) serves a commercially useful function, as defined
23 in clause (i) of subparagraph (B) of paragraph (5) of subdivision
24 (b) of Section 999.

25 (b) The Subletting and Subcontracting Fair Practices Act
26 (Chapter 4 (commencing with Section 4100) of Part 1 of Division
27 2 of the Public Contract Code) shall apply to the information
28 required by subdivision (a) relating to subcontractors certified as
29 disabled veteran business enterprises.

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

33 (d) As used in this section, "contract" does not include a contract
34 negotiated pursuant to Chapter 10 (commencing with Section 4525)
35 of Division 5 of Title 1 of the Government Code.

36 ~~SEC. 10.~~

37 *SEC. 11.* Section 999.11 of the Military and Veterans Code is
38 amended to read:

39 999.11. The Secretary of the Department of Veterans Affairs
40 shall appoint the California Disabled Veteran Business Enterprise

1 Program Advocate. The California Disabled Veteran Business
2 Enterprise Program Advocate shall report directly to the secretary
3 and shall do all of the following:

4 (a) Promote implementation of the California Disabled Veteran
5 Business Enterprise Program.

6 (b) Support and facilitate the activities of administering agencies
7 and existing and potential disabled veteran business enterprises to
8 achieve the goals specified in Sections 999.1 and 999.2, including,
9 but not limited to, both of the following:

10 (1) Assisting awarding departments in identifying certified
11 disabled veteran business enterprises that can offer their services
12 for contracts that contract procurement staff have difficulty
13 identifying.

14 (2) Assisting disabled veteran business enterprises in effectively
15 utilizing certification documents and the state electronic
16 procurement system in identifying which products and services
17 businesses have on offer.

18 (c) Coordinate with the California Disabled Veteran Business
19 Enterprise Program Advocate appointed in all awarding
20 departments pursuant to Section 999.12.

21 (d) Establish a method of monitoring adherence to the goals
22 specified in Sections 999.1 and 999.2.

23 (e) Establish and promote a system to track the effectiveness of
24 promotional activities undertaken by state agencies.

25 ~~SEC. 11.~~

26 *SEC. 12.* Section 999.12 of the Military and Veterans Code is
27 amended to read:

28 999.12. Each awarding department shall appoint an agency
29 Disabled Veteran Business Enterprise Program Advocate. This
30 person shall be the same individual appointed pursuant to Section
31 14846 of the Government Code. The agency Disabled Veteran
32 Business Enterprise Program Advocate shall do all of the
33 following:

34 (a) Assist certified disabled veteran business enterprises in
35 participating in that agency's contracting process.

36 (b) Assist contract officers in seeking disabled veteran business
37 enterprises to participate in the agency's contract and procurement
38 opportunities by performing outreach efforts to recruit certified
39 disabled veteran business enterprises to offer their services as either
40 a prime contractor or subcontractor on any contract proposed by

1 the awarding department that requires disabled veteran business
2 enterprise participation, and by other feasible means.

3 (c) Meet regularly with the contract and procurement staffs of
4 their departments to disseminate information about the California
5 Disabled Veteran Business Enterprise Program, learn of future
6 contracting opportunities, and identify the types of goods, services,
7 and information technology contracts for which the contract and
8 procurement staff is having or anticipates having difficulty in
9 identifying potential certified disabled veteran business enterprise
10 contractors or subcontractors.

11 (d) Serve as an advocate for the disabled veteran business
12 enterprises that are utilized as the agency's contractors or
13 subcontractors.

14 (e) Report to the Office of Small Business and Disabled Veteran
15 Business Enterprise Services regarding any violation of this article.

16 (f) Coordinate and meet, on a regular basis, with the California
17 Disabled Veteran Business Enterprise Program Advocate at the
18 Department of Veterans Affairs in an effort to meet the statewide
19 3-percent goal provided for in Section 999.2.

20 ~~SEC. 12.~~

21 *SEC. 13.* No reimbursement is required by this act pursuant to
22 Section 6 of Article XIII B of the California Constitution because
23 the only costs that may be incurred by a local agency or school
24 district will be incurred because this act creates a new crime or
25 infraction, eliminates a crime or infraction, or changes the penalty
26 for a crime or infraction, within the meaning of Section 17556 of
27 the Government Code, or changes the definition of a crime within
28 the meaning of Section 6 of Article XIII B of the California
29 Constitution.