

Date of Hearing: April 2, 2019

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY
Sabrina Cervantes, Chair

AB 1809 (Committee on Jobs, Economic Development, and the Economy) – As Introduced February 28, 2019

SUBJECT: Disabled veteran business enterprises

POLICY FRAME: This bill implements changes to the DVBE program in response to the 2014 and 2019 State Auditor reports, which found, among other things, that departments failed to maintain appropriate oversight and record keeping protocols on contracts involving DVBEs. These management failures were significant enough as to question whether the program is actually benefiting disabled veterans. Given the sacrifices already experienced by the DVBE and the potential economic opportunity that the state's multibillion dollar annual contract activity could provide to these businesses, it is worthwhile to address the challenges in the program.

The fundamental questions before the Legislature: How vital to the overall performance of the contract is the DVBE participation? If an award was predicated on the prime's commitment to include one or more DVBE subcontractors and the prime fails to include or fails to pay the DVBE as represented in the bid, what should be the consequence? To what extent is this a material defect to the performance of the contract? Should there be repercussions to state agencies that fail to obtain and/or review required documentation and follow-up when the state has been defrauded?

AB 1809 addresses two of the issues raised in the audits, including the need to have a broader array of DVBEs participate in state contracts and the failure of existing oversight practices in ensuring the payment of DVBEs by prime contractors. To accomplish this, the bill enhances the tracking requirements for effectiveness of state outreach activities and requires the awarding department to post on their website the already mandated certification by the prime that the DVBEs have been paid.

AB 1809 is one of several bills addressing the problems raised by these two audits. Other related bills include: AB 1365 (Assembly Committee on Veterans Affairs) and AB 230 (Brough). The committee analysis includes background on the Small Business Procurement and Contract Act, current DVBE program activity, previous and current legislative efforts to improve program accountability, and recommendations from the 2014 and 2019 state audits. Suggested amendments are included in Comment 7.

SUMMARY: AB 1809 tightens the existing monitoring and accountability requirements for state procurement activities related to the disabled veteran business enterprise (DVBE) targeted procurement program in response to a 2019 state audit of the DVBE program. Specifically, **this bill:**

- 1) Prohibits the use of a small business preference or a DVBE preference on bids submitted to an agency through the streamlined procurement process. Under the streamlined procurement process, the state agency is not required to undertake a full competitive bid process and may, instead, obtain a quote from a small business or DVBE and then compare the price with two other small businesses or DVBEs to ensure the state is not overpaying. The streamlined procurement process is limited to contracts between \$5,000 and \$250,000.

- 2) Prohibits a state agency that utilizes the streamlined procurement process from using the same certified small business or certified DVBE to obtain comparable price quotes more than twice in a 12-month period.
- 3) Requires the prime contractor who committed to using a DVBE subcontractor in their bid to certify to the awarding agency at the completion of the contract that all payments to the DVBE, as specified in the contract, have been made.
- 4) Adds specificity to the type of monitoring the Department of Veterans Affairs (CalVet) is required to maintain relative to its outreach and promotional activities, including creating a list that identifies the name, location, number, and type of business, by size and industry sector, attending or participating in a promotional effort.
- 5) Deletes a requirement for a periodic survey of newly certified DVBEs to determine how they learned about the program and why they became certified. Nothing in the bill limits the ability of CalVet to undertake a survey.
- 6) Requires awarding departments to post the certification by the prime that all DVBEs have been paid and to retain the DVBE record for at least three years. These records are already mandated to be submitted by prime contractors who have committed to using DVBE subcontractors. The awarding department is also required to establish a process to confirm that these records are submitted, accurate, and reflect the agreement set forth in the state contract.

EXISTING LAW:

- 1) Designates the Department of General Services (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 preferences in which there is a 5% standardized value included in determining competitive solicitations, discretion is left to departments to determine incentive percentages for a particular transaction based upon a business strategy to achieve their departments' annual 3% DVBE procurement participation goal.
- 4) Requires an awarding state department to require a prime contractor who has committed to using a DVBE subcontractor 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 the 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 the DVBE subcontractor.
- 5) Provides that a person or entity that knowingly provides false information relative to the certification that a DVBE subcontractor has been paid, as described above, is subject to a civil penalty for each violation in the minimum amount of \$2,500 and the maximum amount of \$25,000.
- 6) Authorizes an action for a civil penalty relative to the certification that a DVBE is paid to be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment.
- 7) Defines a DVBE as a business certified as being a sole proprietorship, corporation, or partnership with its home office located in the U.S. and 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, the Regular Scouts, "Old Scouts," the 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 or 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.

FISCAL EFFECT: Unknown

COMMENTS & CONTEXT:

- 1) **Small Business Procurement and Contract Act:** California has a 30 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 businesses and microbusinesses 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 special 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 for bids using a certified small business or DVBE as a prime or subcontractor and 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.

The state also administers a DVBE incentive which allows an awarding department to set an incentive percentage for a particular transaction based upon the department's business strategy to achieve their annual 3% DVBE procurement participation goal. Awarding departments are also required to recognize a 5% preference in cases where a bid includes a certified small business.

In the state's experience, a majority of DVBEs are smaller size firms with 75.4% having dual certifications as a DVBE and microbusiness and 9.6% having dual certifications as a DVBE and small business. The remaining 15% of DVBEs operate with only a single DVBE certification.

- 2) **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:

- 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 meetings 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.

Below are charts displaying six years of DVBE participation rates. The charts include information on mandatory reporting entities and all reporting entities (mandatory reporters + voluntary reporters).

DVBE Five-Year Contracting Activity – Mandated Entities (dollars in millions)				
Fiscal Year	Total Contract Dollars	Total DVBE Dollars	Total DVBE Percent	Total DVBE Contracts
2016-17	\$6,329	\$259	4.1%	\$19,823
2015-16	\$5,855	\$274	4.67%	\$18,638
2014-15	\$8,105	\$314	3.8%	\$16,192
2013-14	\$6,566	\$241	3.67%	\$12,777
2012-13	\$7,151	\$216	3.03%	\$14,907
2011-12	\$7,173	\$340	4.74%	\$16,246
Average	\$6,970	\$277	4.00%	\$15,752
DGS Consolidated Reports for the contracting periods				

DVBE Five-Year Contracting Activity – All Reporting Entities (dollars in millions)				
Fiscal Year	Total Contract Dollars	Total DVBE Dollars	Total DVBE Percent	Total DVBE Contracts
2016-17	\$8,302	\$327	3.9%	\$20,988
2015-16	\$8,090	\$349	4.41%	\$21,739

2014-15	\$10,073	\$407	4.7%	\$18,228
2013-14	\$8,233	\$299	3.64%	\$14,305
2012-13	\$8,573	\$267	3.12%	\$16,776
2011-12	\$8,508	\$373	4.39%	17,835
Average	\$8,695	\$339	3.92%	17,776
DGS Consolidated Reports for the contracting periods				

Under both reporting metrics, the DGS Consolidated Reports are showing that the state is consistently meeting its DVBE procurement participation goals. It is, however, important to recognize that consistency varies among which agencies report every year and even among which agencies believe that they are mandated to report. As an example, in 2011-12, 86% of the mandatory reporting entities reported their contracting activity to DGS. In 2012-13, 79% reported their contracting activity, and in 2015-16, 80% reported.

The following state entities, which are mandated to report, did not submit information to DGS on their contracting reporting activities:

- For 2015-16: The Natural Resources Agency; Fish and Game Commission; Board of Forestry; the Office of Systems Integration; and the San Gabriel & Lower Los Angeles Rivers & Mountain Conservancy.
- For 2016-17: The California Arts Council; the Senior Legislature; the Office of Systems Integration; and the San Gabriel & Lower Los Angeles Rivers & Mountain Conservancy.

- 3) **2014 DVBE Program Audit:** While the statewide DVBE participation goals have been met or exceeded for each of the past six years, programmatic challenges continue to plague the program. Among other things, significant issues have been raised by stakeholders relative to fraudulent bidder practices and the accuracy of the reporting data. The Assembly Jobs Committee has repeatedly heard from veteran groups about bidders that fail to follow through on the DVBE participation commitments made in bid proposals, bidders that contract uncertified DVBEs, and DVBEs being included within bid proposals but never actually performing a commercially useful function.

While some of these concerns have been addressed in legislation - by increasing penalties, establishing a definition of 'commercially useful function,' and strengthening bidder reporting requirements - other significant issues remain to be addressed. More specifically, these include concerns over slow payments to DVBE subcontractors, inconsistent reporting by contracting agencies, a lack of enforcement tools to keep poorly performing DVBEs from obtaining new awards, and challenges to increasing the overall number of certified DVBEs that participate in state contracting activities.

In 2013-14, the Joint Legislative Audit Committee approved a program review of the DVBE program. As part of the State Auditor's 2013-14 review, five awarding departments were visited in order to evaluate the documentation used to support their reported DVBE participation data. According to the Auditor, "All five departments could not fully support the amounts reported, and four of the five had

significant errors. In some cases, departments failed to maintain supporting records or manually counted their DVBE data incorrectly, such as double-counting DVBE contracts or taking credit for working with firms who were not DVBEs. The departments we visited also used different methodologies for reporting their DVBE data, thus limiting the public's ability to compare the performance of different awarding departments."

Among other findings, the State Auditor found the following:

- a) The state's current method of measuring the success of the DVBE program may distort an assessment of whether the program is meeting the legislative intent to increase DVBE participation in state procurement.
- b) The data in the State Contract and Procurement Registration System indicates that only a relatively small subset of DVBE firms is awarded contracts. During fiscal year 2012–13, 83% of the DVBE prime contract award amounts went to only 30 DVBE firms. *No similar assessment was made regarding subprime contractors.*
- c) Reporting methodologies differ by state agencies on DVBE participation.
- d) DGS has not provided clear guidance as to what level of support and documentation is sufficient to support their reported DVBE performance data nor how to report DVBE participation on multiyear contracts. *Since the audit, DGS has modified training documents to clarify many of the issues raised in the audit.*

Based on these findings, the Auditor's recommendations focused on taking actions to increase the overall number of different DVBEs that participate in state contracting, as well as to ensure more consistent reporting and documentation, including a heightened role and accountability for CalVet.

Although several Members of the Legislature introduced bills to implement audit recommendations, only one measure [*AB 639 (Quirk-Silva) from the 2017-18 session*] was successful in reaching the Governor's desk, and that measure was vetoed. A comprehensive list of related bills is provided in Comment 8.

In response to the audit and their own review of the program, DGS and CalVet committed to a number of concrete changes, including to more closely oversee the payments to DVBE subcontractors and to modify training materials to ensure program requirements are being consistently followed. Committee staff have asked for an update on these activities.

- 4) **2019 DVBE Program Audit:** In 2017-18, the Joint Legislative Audit Committee approved a second 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 as were made in the previous audit, including that "None 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 the 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.
- 5) **Leveraged Procurement Agreements:** The 2019 state audit specifically called out the challenges and opportunities of the state's leveraged procurement agreement (LPA) program. Under the LPA program, DGS negotiates a master contract for products and services commonly used by a range of state agencies. An awarding department is able to "leverage" the master contract framework for their own use by purchasing directly from any of the approved vendors related to the LPA. In this way, the LPA program results in a streamlined state purchase process and eliminates the potentially repetitive, costly, and time-consuming bid processes.

The LPA program can, however, limit access to state contracts to only those businesses which have affiliations to the firm(s) who are party to the LPA. When the list of vendors for an LPA does not include any DVBE firms, these firms do not have an opportunity to participate in contracts awarded under that LPA. The State Auditor's report concluded that LPAs offer a significant opportunity for DVBE firms to establish an ongoing relationship with the state. However, DGS reported to the State Auditor that of the nearly 3,500 LPAs currently in-force, only 137 list DVBE firms as vendors.

- 6) **2019 Audit Recommendations:** Recommendations, based on the State Auditor's 2017-2018 review of the DVBE program, are listed below.
- f) ***For the Legislature:***
 - i) To ensure that awarding departments that fail to meet the 3% goal receive the assistance necessary to achieve the goal, amend state law to transfer the responsibility for monitoring and assisting underachieving departments from CalVet to General Services.
 - ii) To minimize the occurrence of program abuse involving DVBE subcontractors, amend state law to require awarding departments to notify those DVBE subcontractors when they are named on an awarded contract.
 - g) ***For all state entities participating in DVBE contracting activities:***
 - i) To ensure that DVBE participation data are reported accurately and consistently, implement or strengthen a review process to ensure that DVBE participation amounts entered into its data systems or FI\$Cal are accurate. This review process should include verification, on a sample basis, of the amounts awarded to, and the certification status of, the DVBE contractor or subcontractor for high-value contracts that include DVBE participation.

h) *For the Department of Veterans Affairs:*

- i) 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:
- (1) Assess, at least annually, the effectiveness of its past outreach efforts in increasing the number of DVBE firms that become certified.
 - (2) Work with awarding departments to identify the types of goods and services for which they struggle to find a DVBE contractor or subcontractor.
 - (3) Develop an outreach plan to include outreach activities found to be effective in the past based on its assessment.
 - (4) 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.
 - (5) 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.
 - (6) 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.

i) *For DGS:*

- i) 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:
- (1) Assess, at least annually, the effectiveness of its past outreach efforts in increasing the number of DVBE firms that become certified.
 - (2) 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.
 - (3) Work with awarding departments to identify the types of goods and services for which they struggle to find a DVBE contractor or subcontractor.
 - (4) Develop an outreach plan to include outreach activities found to be effective in the past based on its assessment.
 - (5) Develop and implement a plan to encourage DVBE firms to participate in leveraged procurement agreements.
 - (6) 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.
 - (7) 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.

- ii) 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.
 - iii) To minimize the occurrence of program abuse, strengthen enforcement, and ensure that program abuse cases are handled appropriately and consistently, General Services should:
 - (1) Remind the awarding departments about preventive measures, including contract award notification to all subcontractors listed on the winning contractor's bid and providing the subcontractors with the name of the prime contractor, the role of the DVBE firm in the contract, the amount of the contract dollars designated for each subcontractor, and contact information that subcontractors can use if they encounter any issues on the project.
 - (2) Develop procedures for awarding departments to help them identify whether a complaint constitutes program abuse, document and track all complaints, and take appropriate steps when investigating program abuse complaints.
 - (3) Track program abuse complaints, including the type of program abuse, how it was reported or discovered, and the dates specific actions were taken on the case.
 - iv) To ensure that DVBE participation data are reported accurately and consistently, DGS should:
 - (1) Complete the programming necessary to include DVBE subcontractor information by June 30, 2019.
 - (2) Implement or strengthen a review process to ensure that DVBE participation amounts entered into its data systems or FI\$Cal are accurate.
 - (3) Issue a policy to require, until FI\$Cal is available, awarding departments to implement or strengthen a secondary review process to ensure that the DVBE activity reports are accurate and supported by departments' data systems.
- 7) **Proposed Amendments:** Below is a list of amendments the committee members may wish to review when considering the bill.
- a) Add legislative intent as to the purpose of the bill.
 - b) Specify that the purpose of maintaining records of promotional events is to be able to track the effectiveness of the promotional activities.

- c) Clarify what information the awarding departments are supposed to post on their websites following the completion of the contract.
- d) Make technical amendments to add clarity to the existing DGS responsibilities.

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

- a) AB 1809 is one of several bills addressing the problems raised by these two audits this session. Other related bills include:
 - i) **AB 230 (Brough) Verification of DVBE Contracting:** This bill tightens state contracting practices related to the disabled veteran business enterprise (DVBE) program, including requiring an awarding department to verify the amounts paid to the DVBE subcontractor prior to crediting the contract toward its 3% DVBE procurement participation goal. Status: Pending in the Assembly Committee on Jobs, Economic Development, and the Economy.
 - ii) **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: Pending in the Assembly Committee on Jobs, Economic Development, and the Economy.
- b) Bills from prior legislative sessions:
 - i) **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: The bill was signed by the Governor, Chapter 342, Statutes of 2010.
 - ii) **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. *Governor's Veto Message:* 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.
 - iii) **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.
 - iv) **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.

- v) ***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, 2017-18 Session.
- vi) ***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.
- vii) ***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. Prohibits a state agency from allowing a party to participate in any procurement activity if the party has been suspended, debarred, or otherwise excluded from participation in a state contract. Status: Died in the Assembly Committee on Accountability and Administrative Review, 2014.
- viii) ***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 are were declaratory of existing law. Status: Moved to the Assembly Inactive File without further action, 2016.
- ix) ***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 in the Senate Committee on Appropriations, 2014.
- x) ***SB 941 (Flores) 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.
- xi) ***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 subs 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.
- xii) ***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.

- xiii) **SB 1510 (Wright) Commercial Useful Purpose:** 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.

- 9) **Double Referral:** This measure has been double referred to the Assembly Committee on Jobs, Economic Development, and the Economy and the Assembly Committee on Accountability and Administrative Review (AAR). Should this measure pass JEDE, it will be referred to AAR for further policy consideration.

REGISTERED SUPPORT / OPPOSITION:

Support

None received

Opposition

None received

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