

Date of Hearing: July 9, 2019

ASSEMBLY COMMITTEE ON JOBS, ECONOMIC DEVELOPMENT, AND THE ECONOMY

Sabrina Cervantes, Chair

SB 588 (Archuleta) – As Amended June 27, 2019

**SENATE VOTE:** 38-0

**SUBJECT:** Public contracts: Disabled Veteran Business Enterprise Program

**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. Given the lack of follow through, DVBEs have potentially been defrauded of millions of dollars of state procurement opportunities, and prime contractors who follow the law are potentially being disadvantaged in the highly competitive state contracting process. The DVBE program was established to honor the sacrifice disabled veterans made during their military service and to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship by leveraging the state's multi-billion dollar annual contract activity.

Findings from the two audits raise several key questions: 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? If the prime contractor fails to file certifications that they have met their DVBE contractual obligations, should there be a cure period before penalties are applied? 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?

SB 588 is one of several bills addressing the problems raised by these two audits. In this bill, the issue of prime contractors not filing mandated certifications with awarding departments is addressed. To accomplish this, the bill establishes new fines and penalties for a prime contractor who fails to submit required DVBE payment documentation, as committed to in its submitted bid.

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 6.

**SUMMARY:** SB 588 requires a contracting agency to give a prime contractor that fails to certify that all DVBE subcontractors have been paid, as specified, a reasonable opportunity to comply. If the prime contractor still fails to comply, the contractor is to be suspended from participating in a state contract for five years for a first violation and permanently upon a second violation. Specifically, **this bill:**

- 1) Expands the elements of the previously mandated certification by the prime contractor to include:
  - a) The project name associated with each DVBE; and
  - b) That all payments specified in the DVBE subcontract have been made to the DVBE.

- 2) Establishes a process and penalties for a prime contractor that fails to submit the required DVBE payment certification to the awarding department, as follows:
  - a) A prime contractor that fails to provide the appropriate DVBE payment certifications is to be given a reasonable opportunity to cure the failure by submitting the required documents to the awarding department.
  - b) An awarding department is required to notify the Department of General Services (DGS) of a prime contractor that fails to provide the specified certification after receiving a responsible opportunity to comply.
  - c) A \$10,000 civil penalty is set for a first violation. For subsequent violations, a civil penalty of \$10,000 is set, plus an additional \$10,000 for each prior violation.
  - d) This remedial process and application of civil penalties sunset on January 1, 2025.
- 3) Requires that the DVBE incentive be reflected in the evaluation of a bid, even in cases where DVBE participation was not a mandated component of the bid.
- 4) Requires the Legislative Analysts to, on or before January 1, 2023, complete a comprehensive assessment of the DVBE program, which at a minimum identifies:
  - a) Reports of noncompliance with the requirements of the DVBE program.
  - b) Whether the Department of General Services is tracking complaints of abuse of the program, and information about those complaints, if available, including the type of abuse, how it was reported or discovered, dates that specific actions were taken on the case, and preventive measures taken by awarding departments.
  - c) Whether the awarding departments notified disabled veteran business enterprise subcontractors when they were named on an awarded contract.
  - d) Whether prime contractors received approval by the Department of General Services to replace a disabled veteran business enterprise subcontractor identified by the prime contractor in its bid or offer.
  - e) Whether civil penalties assessed have deterred prime contractors from failing to provide accurate certifications.
- 5) Makes other clarifying modifications to the law.

**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 a preference in which there is a 5% standardized value included in determining competitive solicitations, discretion is left to a department to determine incentive percentages for a particular transaction based upon a business strategy to achieve that department's 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 in its awarded bid to certify the following upon completion of the contract:
  - a) The total amount the prime contractor received under the contract;
  - b) The name and address of each DVBE that participated in the performance of the contract;
  - c) The amount each DVBE subcontractor received from the prime contractor; and
  - d) That all required payments under the state contract have been made to each DVBE subcontractor.
- 5) Provides that any person or entity that knowingly provides false information relative to the DVBE payment certification, 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 any public prosecutor, in the name of the people of California, to bring the specified civil action for knowingly including false information in the DVBE payment certification, 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, Regular Scouts, "Old Scouts," Special Philippine Scouts, "New Scouts," and those who have at least a 10% service-connected disability and are domiciled in the state.
  - b) The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business.
  - c) The DVBE's ownership of the business meets the following criteria:
    - i) If the DVBE is a sole proprietorship, it is at least 51% owned by one or more disabled veterans.
    - ii) If the DVBE is a publicly owned business, at least 51% of its stock is unconditionally owned by one or more disabled veterans.
    - iii) If the DVBE is a subsidiary, it is wholly owned by a parent corporation, but only if at least 51% of the voting stock of the parent corporation is unconditionally owned by one or more disabled veterans.
    - iv) If the DVBE is a joint venture, it is an entity in which at least 51% of the joint venture's management, control, and earnings are held by one or more disabled veterans.

**FISCAL EFFECT:** Unknown

**COMMENTS & CONTEXT:**

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

<b>DVBE Five-Year Contracting Activity – Mandated Entities</b> (dollars in millions)				
<b>Fiscal Year</b>	<b>Total Contract Dollars</b>	<b>Total DVBE Dollars</b>	<b>Total DVBE Percent</b>	<b>Total DVBE Contracts</b>
2016-17	\$6,329	\$259	4.1%	\$19,823
2015-16	\$5,855	\$274	4.6%	\$18,638
2014-15	\$8,105	\$314	3.8%	\$16,192
2013-14	\$6,566	\$241	3.6%	\$12,777
2012-13	\$7,151	\$216	3.0%	\$14,907
2011-12	\$7,173	\$340	4.7%	\$16,246
<b>Average</b>	<b>\$6,863</b>	<b>\$274</b>	<b>4.0%</b>	<b>\$16,431</b>

DGS Consolidated Reports for the contracting periods

<b>DVBE Five-Year Contracting Activity – All Reporting Entities</b> (dollars in millions)				
<b>Fiscal Year</b>	<b>Total Contract Dollars</b>	<b>Total DVBE Dollars</b>	<b>Total DVBE Percent</b>	<b>Total DVBE Contracts</b>
2016-17	\$8,302	\$327	3.9%	\$20,988
2015-16	\$8,090	\$349	4.4%	\$21,739
2014-15	\$10,073	\$407	4.7%	\$18,228
2013-14	\$8,233	\$299	3.6%	\$14,305
2012-13	\$8,573	\$267	3.1%	\$16,776
2011-12	\$8,508	\$373	4.4%	\$17,835
<b>Average</b>	<b>\$8,630</b>	<b>\$337</b>	<b>4.0%</b>	<b>\$18,312</b>

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 each 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; Office of Systems Integration; and San Gabriel & Lower Los Angeles Rivers & Mountain Conservancy.
- For 2016-17: The California Arts Council; Senior Legislature; Office of Systems Integration; and 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 subcontractors.*

- 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 7.

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

SB 588 is one of several bills introduced this year to address the 2019 audit findings. Other related bills include AB 230 (Brough), AB 1635 (Assembly Veterans Affairs Committee) and AB 1809 (Cervantes). These and other related bills are described in Comment 7.

- 5) **2019 Audit Recommendations:** Recommendations based on the State Auditor's 2017-2018 review of the DVBE program are listed below.
- a) *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.
- b) *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 state 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.
- c) *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.



d) *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, DGS 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 FISCAL are accurate.
  - (3) Issue a policy to require, until FISCAL 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.
- 6) **Proposed Amendments:** A permanent ban on contracting with the state triggered by any bid that includes a principal of a company found to be noncompliant is a very harsh penalty for a business whose primary customers are government agencies. While the failure to meet the straightforward certification requirements should have some consequence, potentially putting a company out of business may be too extreme. Below is a list of amendments the committee members may wish to consider.
- a) Set a term of not less than 15 calendar days and no more than 30 calendar days for the cure period for prime contractors who fail to file the mandated certification.
  - b) Require DGS to contact the certified DVBE identified in the initial bid when the prime contractor applies for a DVBE substitution.
  - c) Authorize any public prosecutor to bring the civil charges for not filing the mandated certification.
  - d) Make other technical and conforming changes.
- 7) **Related Legislation:** Below is a list of bills from the current and prior sessions.
- a) Bills from the current legislative session:
    - i) **AB 230 (Brough) DVBE Program Accountability:** This bill makes a number of changes to the DVBE procurement program, including, but not limited to, requiring a prime contractor to provide proof of DVBE payments, requiring the awarding agency to review DVBE procurement documents for completeness and accuracy, and requiring DVBE procurement participation commitments be identified in each state contract. Status: Pending in the Senate Committee on Veterans Affairs.
    - ii) **AB 1635 (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 Senate Committee on Veterans Affairs.
    - iii) **AB 1809 (Cervantes) DVBE Accountability:** This bill modifies the role of the Department of Veterans Affairs Small Business Advocate and tightens the existing monitoring and accountability requirements for state procurement activities related to the DVBE targeted procurement program. Status: Pending in the Senate Committee on Veterans Affairs.

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: 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. The veto message stated: *“This bill would require the Department of Veteran Affairs to maintain specific records of promotional efforts related to the disabled veteran business enterprise program. The department should continue to review its outreach strategies for this important program within its existing authority. This bill is unnecessary to fulfill such efforts and adds another layer of bureaucratic monitoring.”*
- 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.
- 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. This bill would have prohibited a state agency from allowing a party to participate in any procurement activity if the party had been suspended, debarred, or otherwise excluded from participation in a state contract. Status: Died in the Assembly Committee on Accountability and Administrative Review, 2014.

- 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 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 of 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 subcontractors have been paid, as specified, a reasonable opportunity to comply. If the prime failed to comply, DGS would have been required to suspend the prime from participating in a state contract for five years for a first violation and permanently upon a second violation. Status: Died without further action in the Assembly Committee on Jobs, Economic Development, and the Economy, 2018.
- 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) Commercially Useful Function***: This bill tightens the bidder requirements for demonstrating that a small business, microbusiness, or DVBE serves a commercially useful function (CUF) in carrying out a state contract. The purpose of the CUF requirement is to prevent a bidder from using a business as a “pass through” or “front” for another business that would otherwise not qualify for the small business or microbusiness preference or DVBE incentive. By meeting the CUF requirements, a bidder may claim a bid preference or enhancement (often both) on competitive state contracts for goods, services, informational technology, and public works. Status: Signed by the Governor, Chapter 421, Statutes of 2012.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

American G.I. Forum  
American Legion, Department of California  
AMVETS, Department of California  
California Association of County Veterans Service Officers  
California State Commanders Veterans Council  
CFR and Associates  
Coresivity  
Dentist's Choice  
DVBE Insurance and Financial Services  
Global Blue DVBE  
M.A. Steiner Construction  
Military Officers Association of America, California Council of Chapters  
National Guard Association of California  
Rams Head Solutions  
U.S. Veteran Business Alliance  
Veteran Enhanced Technology Solutions

**Opposition**

None on File

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