

Date of Hearing: July 2, 2013

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS
Al Muratsuchi, Chair
SB 719 (Correa) – As Amended: April 17, 2013

SENATE VOTE: 39-0

SUBJECT: Department of Veterans Affairs: California Disabled Veteran Business Enterprise Program reports

SUMMARY: Modifies reporting requirements for State departments regarding their goal attainment in the California Disabled Veteran Business Enterprise (DVBE) procurement program. Specifically, this bill: requires each department that adopts and uses the Financial Information System for California (FISCAL) system to begin reporting its statewide goal attainment to the Department of General Services (DGS) in terms of overall dollar amount expended each year by the awarding department.

EXISTING LAW:

- 1) Requires State departments to implement a goal of awarding at least 3% of their annual contract dollars to certified DVBEs.
- 2) Designates the Department of General Services (DGS) as the administering agency for the DVBE program, except in the case of contracts for professional bond services.
- 3) Provides that an awarding State department shall require the prime contractor, upon completion of a contract that includes DVBE subcontracting, to certify to the department the following information:
 - a) The total amount the prime contractor received under the contract.
 - b) The name and address of the DVBE that participated in the contract.
 - c) The amount each DVBE received from the prime contractor.
 - d) That all payments under the contract have been made to the DVBE.
 - e) Requires the awarding department to keep that certification on file.
- 4) Provides for civil penalties if a person or entity knowingly provides false information shall be subject to a civil penalty for each violation (minimum of \$2,500, maximum of \$25,000). An action for a civil penalty under this subdivision may 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.

FISCAL EFFECT: According to the Senate Committee on Appropriations:

The Department of General Services (DGS) indicates that it would incur one-time costs of \$150,000 (General and special funds) to implement this bill. Specifically, DGS would need to revise policies in the State Contracting Manual, revise training curricula and materials in the California Procurement and Contracting Academy, and provide training to all the departmental reports coordinators on the new reporting methodology.

Statewide, the bill could result in unknown, but potentially major costs (reaching the low millions of dollars) to departments to use the reporting method prescribed by the bill. Approximately 180 state departments are currently required to report DVBE participation to DGS. Current administrative practice is to allow departments to report DVBE participation to DGS in a manner that is feasible for them. In many cases, participation is reported based on the estimated value of the contract award and the level of participation to which the prime contractor committed, rather than based on the state's actual expenditures to the prime contractor or, in cases where the DVBE is a subcontractor, on the prime contractor's report of its expenditures to the DVBE subcontractor.

Standardizing the manner in which state agencies report DVBE participation by requiring them all to report using the same methodology will likely increase costs because they will no longer be permitted to select the least labor-intensive method.

COMMENTS:

FISCAL

The FISCAL Project is a transformation project intended to optimize the business management of State government in the areas of budgeting, accounting, procurement, and cash management. The project will prepare the state systems and workforce to function in an integrated financial management system environment.

Existing law provides that "(all) state departments and agencies shall use the FISCAL system." [Government Code Section 15849.22(b) (1)] The system is scheduled to be deployed through State government in five waves: Pre-Wave and Waves 1-4.

According to FISCAL's Annual Report to the Legislature (February 13, 2013), the program's Pre-Wave is scheduled to "go live" on July 1, 2013. Waves 1 through 4 are scheduled to go live in the following three years, with full implementation targeted for July 1, 2016. Thus, the effective implementation date of this bill's reporting requirements for any given State agency parallels that agency's position within the five-wave adoption schedule for FISCAL.

DVBE Program

California's Small Business Act (SBA), which is administered through DGS, was implemented more than 30 years ago to establish a small business preference within the state's procurement process for the purpose of increasing the number of contracts between the state and small businesses.

In 1989, a DVBE component was established within the SBA to address the special needs of disabled veterans seeking rehabilitation and training through entrepreneurship, and to recognize the sacrifices of Californians disabled during military service. Under the provisions of the DVBE program, each state agency is required, in awarding contracts throughout the year, to honor California's disabled veterans by taking all practical actions necessary to meet or exceed an annual 3% DVBE participation goal.

State agencies have a goal to award at least 3% of their annual contract dollars to certified DVBEs. The agency decides whether or not to include the DVBE participation requirements in a particular solicitation and the percentage of the goal, if it is included. The result is that some contracts may have a goal of more than 3%, some may have a goal of less than 3%, and some contracts may have no DVBE participation goal.

However, the overall 3% DVBE annual goal was reached rarely by any state agency until recent years. The primary problems have been that (1) state law contains no strong enforcement measure to ensure agency compliance and (2) a supply shortfall – the lack of certified DVBEs to meet aggregate agency demand.

DGS plays several important roles in the program, including certifying veteran-owned businesses as eligible DVBEs and monitoring the compliance of state agencies in meeting their 3% goals.

DGS reports DVBE goal attainment in state contracting in its “Statewide Consolidated Annual Report” for each fiscal year. According to these reports, the State generally was underperforming in attaining the 3% DVBE goal until the three most recent years for which data is available. (The most current data year available is for Fiscal Year 2010-2011.)

According to DGS, the State’s recent record is 2.96% in FY 2008-2009, 3.78% in FY 2009-2010, and 4.82% in FY 2010-2011.

According to the Senate Committee on Veterans Affairs:

In August 2012, the Senate Veterans Affairs Committee held a public informational hearing on the DVBE Program. Testimony by a representative from DGS’ Procurement Division indicated that the State’s recent positive DVBE record reflects a mix of nonstandardized data from various agencies. The mix includes reporting from some agencies based on the dollar amounts expressed up-front in DVBE contracts and reporting from other agencies based on the dollar amounts actually paid to the DVBEs under those contracts. Thus, the State’s official performance record is a mix of “actually paid out” and “what was promised.” Since the purpose of the program is to provide economic assistance to disabled veterans, the more appropriate measure of success would be actual awards paid out. That metric is what SB 719 would standardize as the metric for all agency reporting.

It is a better measure of actual impact to disabled veteran businesses to evaluate the "...overall dollar amount expended each year by the awarding department..." than to include a mix of awarded amounts and amounts expended. Mixing the two metrics together could result in the impact to disabled veteran businesses being either over or understated. The point of the reporting requirement is to provide accurate feedback to government on the DVBE goal.

Related Legislation:

SB 276 (Roth, pending, 2013)

Existing law permits a state agency to award contracts for goods, services, or information technology with values of between \$5,000 and \$250,000 to certified small businesses, including microbusinesses, or to disabled veteran business enterprises (DVBE), without complying with

specified competitive bidding requirements. This bill increases the upper limit of the value of those contracts to \$500,000.

SB 297 (Roth, pending, 2013)

Increases the DVBE program's annual statewide participation goals for state agencies from 3% up to 5%.

SB 733 (Block, pending, 2013)

Existing law permits the use of business utilization plans (BUP) to meet certain requirements in the DVBE program. This bill repeals those provisions and establishes new criteria using the "business utilization plan value" of a "business utilization plan partner," as defined.

SB 817 (Committee on Vet Affs, held Senate Approps, 2011)

Allows a vendor with state contracts to meet DVBE goals with dollars from other than state contracts. (2) Modifies the requirement for a DVBE business utilization plan so that the plan's required listing of products and services includes both direct and indirect costs. (3) Codifies certain key definitions into the Public Contract Code.

ABX4 21 (Evans, Ch. 19, Stats. 2009 4th Ex.S.)

Deleted the requirement (including all of the supporting subdivisions) that the lowest responsible bidder make "a good faith effort" to meet minority business enterprise, women business enterprise, and disabled veteran business enterprise participation goals on all state procurements.

SB 115 (Florez, Ch. 451, Stats. 2005)

Moved the DVBE from the Department of Veterans Affairs to the Department of General Services and modified the standards for meeting the program's participation goals.

REGISTERED SUPPORT / OPPOSITION:

Support

American Legion- Department of California
AMVETS- Department of California
California State Commanders Veterans Council
Vietnam Veterans of America- California State Council

Opposition

None on File.

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