Date of Hearing: March 26, 2019

ASSEMBLY COMMITTEE ON VETERANS AFFAIRS
Jacqui Irwin, Chair
AB 1365 (Committee on Veterans Affairs) – As Amended March 19, 2019

SUBJECT: Disabled Veteran Business Enterprise Program

SUMMARY: This bill requires a contract-awarding state department to maintain all records of the information provided by a prime contractor under the Disabled Veteran Business Enterprise (DVBE) Program and to retain the records for a minimum of six years; to establish appropriate review procedures for those records; and to directly inform a DVBE when it has been identified as a subcontractor in an awarded contract. Specifically, **this bill**:

1) Requires an awarding department to maintain all records of the information currently provided by a prime contractor that entered into a subcontract with a DVBE and to retain those records for a minimum of six years after collection.

2) Requires an awarding department to establish appropriate review procedures for those records to ensure the accuracy and completeness of the award amounts and paid amounts reported.

3) Requires those records to be maintained in a manner that facilitates access and review by external auditors.

4) Requires an awarding department to directly inform a DVBE of its inclusion in an awarded contract when the DVBE has been identified as a subcontractor within the awarded contract.

EXISTING LAW:

1) Establishes the California DVBE program, which requires state agencies and all other state entities contracting for materials, supplies, equipment, alteration, repair, or improvement to have at least three percent participation goals for DVBEs, as defined.

2) Specifies that the Department of General Services (DGS), except in the case of contracts for professional bond services, is the administering agency of the DVBE program.

3) Defines a DVBE to mean a business certified by the administering agency that meets all of the following:

    a) It is a sole proprietorship at least 51% owned by one or more disabled veterans, or in the case of a publicly owned business, at least 51% of its stock is owned by one or more disabled veterans; a subsidiary that 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; or a joint venture in which at least 51% of the joint venture's management, control, earnings are held by one or more disabled veterans.

    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 owner of the business.

c) It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign firm, or other foreign-based businesses.

4) Defines a "disabled veteran" to mean a veteran of the military, naval, or air service of the United States, who has at least a 10% service-connected disability and who is domiciled in California.

5) Requires an awarding department, upon completion of an awarded contract for which a commitment to achieve a DVBE goal was made, to require the prime contractor that entered into a subcontract with a DVBE to certify to the awarding department information relating to amounts paid under the contract, as specified.

6) Subjects a person or entity that knowingly provides false information on the certification discussed above, certain civil penalties.

7) Makes it a crime to, among other things, knowingly and with intent to defraud, fraudulently represent participation of a DVBE in order to obtain or retain a bid preference or a state contract.

8) Requires DGS to suspend, for a specified period, any person who violates the DVBE bidding provisions, from bidding on, or participating as either a contractor, subcontractor, or supplier in, any state contract or project, as specified.

9) Requires DGS to monitor the status of all reported violations and maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

10) Prohibits an awarding department from entering into any contract with any person suspended for violating these provisions during the suspension and requires the awarding department to check the central listing provided by DGS to verify that the person or contract to whom the contract is being awarded, or any person being utilized as a subcontractor or supplier by that person or contractor, is not under suspension

FISCAL EFFECT: This bill has not been analyzed in a fiscal committee.

COMMENTS:

Background:

In an audit of the Disabled Veteran Business Enterprise Program released in 2013, the California State Auditor concluded that many awarding departments did a poor job of obtaining and maintaining the certifications and their data. The same audit established that the California Department of Transportation (CalTrans) lacked the data to validate 39% of its DVBE subcontractor payments and had to correct its annual contracting activity report to the DVBE program's central administering agency, DGS. The audit found that CDCR lacked the data to validate 65% of its reported DVBE subcontractor payment data and also had to resubmit a corrected report to DGS.

Due to the size of their overall procurement programs and high level of DVBE participation, the corrected reports by the two large departments drove the overall state-level DVBE goal attainment for FY 2012/13 down to just 3.12%, a meaningful drop from state-level DVBE goal attainment levels of 4.39% in FY 2011/12 and 4.36% in FY 2010/11. CalTrans and CDCR are just two of the more than 100 state-level entities participating in the DVBE program.

Ensuring the proper collection and storage of subcontractor payment data is a key factor in ensuring that DVBEs are being used properly and paid promptly. The data also is valuable in ensuring that the DVBE program is used as it is intended and that the state is reaching its attainment goals.

In its most recent audit of the program, "Disabled Veteran Business Enterprise Program: The Departments of General Services and Veterans Affairs Have Failed to Maximize Participation and to Accurately Measure Program Success," released in February, the auditor found that several awarding departments did not have procedures for notifying a DVBE firm of its inclusion in an awarded contract. In fact, when the auditor contacted DVBE firms in the course of its audit, it found:

> " … only eight of the 24 DVBE firms we interviewed that had been named as subcontractors on the contracts we reviewed stated that they had been notified by the awarding department. In fact, four of the remaining 16 DVBE firms told us that they were not aware that the prime contractor had listed them as a subcontractor on the contracts we selected until we asked about them."

In order to minimize the occurrence of program abuse, the auditor recommended that the legislature amend state law to require awarding departments to notify DVBE subcontractors when they are named on an awarded contract.

Previous legislation:

SB 1180 (Newman), 2017-2018 was substantially similar to this bill, but did not include the component requiring that an awarding department inform a DVBE of its inclusion in an awarded contract.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Veteran Service Agencies

Opposition

None on file.

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