

MEMORANDUM OF LAW

DATE: January 15, 1992
TO: Staajabu Heshimu, Equal Opportunity Contracting Program
Manager
FROM: City Attorney
SUBJECT: Disabled Veterans Business Enterprise (DVBE) Program

You have asked whether, on state assisted City contracts, the State's new DVBE participation goals apply to the City.

The DVBE participation program was adopted by statute in 1989 and is found in the Military and Veterans Code at section 999 et seq. Section 999.1 provides in pertinent part:

Section 999.1. Annual statewide participation goals for disabled veteran business enterprises

(a) (1) Notwithstanding any other provision of law, each awarding department shall have annual statewide participation goals of not less than 3 percent for disabled veteran business enterprises for contracts entered into by the awarding department during the year for professional bond services. This section shall not apply if a contract for professional bond services of an underwriter is to be obtained by competitive bid.

However, each awarding department shall establish goals for contracts to be obtained by competitive bid for professional bond services.

Section 999 (d) indicates that:

"Contract" includes any contract, agreement or joint agreement to provide professional bond services to the State of California or an awarding

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"Contract" also includes any agreement or joint development agreement to provide labor, services, material, supplies, or equipment in the performance of a contract, franchise, concession, or lease granted, let, or awarded for and on behalf of the State of California.

Section 999 (b) defines awarding department as:

Any agency, department, constitutional officer, governmental entity, or other officer or entity of the state empowered by law to issue bonds or enter into contracts on behalf of the State of California. Emphasis added.

Since the City may not enter into contracts on behalf of the state, normal statutory construction would indicate the City need not pass state

mandated DVBE goals on to individuals or firms with which the City contracts.

The Legislative counsel's digest on the statute indicates that only state governmental entities are covered. Again, typical statutory construction would indicate "state governmental entities and political subdivisions thereof" if cities were to be subject to the statute. Emphasis added. Note however, that this interpretation may change at some later date. The statute, being only two years old, has, as yet, no case law interpreting it's provisions in any detail.

If you would like further research on this issue, a legislative history can be ordered from the State through the City's Department of Legislative Services. A legislative history would provide full historical background and the articulated intent of the sponsoring legislators. Please contact me if you have additional questions.

JOHN W. WITT, City Attorney

By

Sharon A. Marshall

Deputy City Attorney

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