

## 8. BUSINESS PARTICIPATION PROGRAM REQUIREMENTS

### 8.00 INTRODUCTION (Rev 04/22)

This chapter discusses programs established to encourage participation in State contracting by various segments of the business community. One or more of these programs may be involved in a specific contracting opportunity. Agency staff involved with contract preparation should be familiar with these programs such that they can explain the program and contracting agency discretion decisions to bidders. Questions about these programs should be addressed to:

[The Department of General Services, Procurement Division](http://www.dgs.ca.gov/pd) (See Table 8.1) Internet Address: [www.dgs.ca.gov/pd](http://www.dgs.ca.gov/pd)

Offices listed in Table 8.1 can be contacted through the Procurement Division web site.

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**8.02 PROCUREMENT DIVISION RESPONSIBILITY AND LEGAL REFERENCES**  
(Rev 04/22)

**Table 8.1**

<b>Small Business and DVBE Participation Program</b>		
<b>Function or Service</b>	<b>Office/Unit</b>	<b>Authority</b>
Act as a resource. Disseminate policies and procedures.	Office of Small Business & DVBE Services (DGS/OSDS) (916) 375-4940 Email: <a href="mailto:OSDShelp@dgs.ca.gov">OSDShelp@dgs.ca.gov</a>	Mil. & Vet. Code §§ 999.5, 999.6; Govt. Code § 14839
Coordinate Reporting	DGS/OSDS (see above)	PCC 10111
Address Compliance Violations	DGS/OSDS (see above)	Mil. & Vet Code §§ 999.2(g), 999.9; PCC § 10115.10(c); Govt. Code § 14842 et seq.
Certification	DGS/OSDS (see above)	Mil. & Vet. Code § 999 et. seq.; PCC § 10115.9; Govt. Code § 14839.1
Review, approve, audit DVBE Utilization Plans	DGS/OSDS (see above)	PCC § 10115.15
Administer DVBE Program participation goal and incentive	DGS/OSDS (see above)	Mil. & Vet. §§ 999, 999.5

Administer the 5 % Small Business Preference, Small Business issues and questions	DGS/OSDS (see above)	GC § 14835 et seq.;
Outreach Program Small Business Advocate Program	DGS/OSDS Email: <a href="mailto:BusinessOutreach@dgs.ca.gov">BusinessOutreach@dgs.ca.gov</a>	GC §§ 14845 et seq.
Ensure Prompt Payment to Small Businesses	Purchasing Authority Management Section (916) 375-4351 DGS/OSDS <a href="mailto:BusinessOutreach@dgs.ca.gov">BusinessOutreach@dgs.ca.gov</a>	GC § 927 et seq.
<b>Target Area Contract Preference Act (TACPA)</b>		
Administer the program and serve as a	Dispute Resolution & Preference Program Section (916) 375-4609	GC § 4530 et seq.; 2 CCR §§ 1896.30 et seq.

## **8.10 INTRODUCTION TO DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PARTICIPATION PROGRAM**

**(Rev 04/22)**

The California Disabled Veteran Business Enterprise Program requires that agencies take all practical actions necessary to meet or exceed a Disabled Veteran Business Enterprise (DVBE) participation goal of 3% of the agency's overall contract dollars. (See Mil & Vet Code § 999, et seq.; PCC § 10115; Tit. 2 CCR § 1896.60, et seq.)

An agency has the discretion to apply this goal to a specific contract, but is expected to meet the goal for the total of its contracting each year. State agencies must report annually the level of participation achieved. Should full participation not be attained, agencies must develop an improvement plan to identify the problem and achieve the goal in the future.

## **8.11 DVBE REGULATIONS**

**(Rev 6/17)**

The law requires each agency to adopt regulations to implement the program. However, to avoid duplication of effort, agencies have the option to adopt the regulations developed by DGS. (See Tit. 2 CCR § 1896.60, et seq.) The summarized policies and procedures presented in this chapter are based on those regulations. If agency

personnel have questions or issues to be resolved, they should refer to their agency's regulations or to the DGS regulations as applicable.

## **8.12 WHEN TO APPLY THE DVBE GOAL TO A CONTRACT** (Rev 04/22)

- A. Agencies should develop a plan or strategy to ensure goal achievement for their overall departmental contract program.
- B. Unless statutorily exempt, all contracts, regardless of amount, are subject to the DVBE requirement. Agencies may exempt individual contracts from the requirement with the approval of a highest ranking executive officer or their designee; however agencies are still expected to meet the overall DVBE goal attainment at the end of each year. When an awarding agency decides to waive the DVBE requirement, this must be noted in the solicitation.
- C. Awarding agencies have sole discretion to exempt contracts from the DVBE participation requirements. In reviewing contracts, DGS services will rely on the awarding agency's decision to exempt contracts.
- D. Contracts with government agencies, including public colleges and universities, and joint power authorities, are exempt from the DVBE participation requirements.
- E. Additional information regarding DVBE participation requirements can be found in SCM volume 2.

## **8.13 BIDDERS' RESPONSE TO DVBE REQUIREMENTS IN A SOLICITATION** (Rev 6/17)

- A. When the DVBE participation requirements have been included in the solicitation, bidders must commit to meeting or exceeding the minimum DVBE participation goal.
- B. Meeting the minimum participation goal

There are two (2) methods of meeting the goal. If a bidder is a:

1. Non-DVBE: Commit to use DVBEs for the amount stated in the bid document; or
2. DVBE: Commit to perform not less than the amount stated in the bid document with its own forces or in combination with other DVBEs.

## 8.14 QUALIFYING AS A DVBE

(Rev 04/22)

### A. Disabled Veteran Business Enterprise

1. **Disabled Veteran:** A veteran of the U.S. military, naval, or air service, with a service-connected disability of 10% or more, and is a resident of California.
2. **Disabled Veteran Business Enterprise:** A business concern certified by DGS/OSDS as meeting all of the following requirements:
  - 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 unconditionally owned by one or more disabled veterans; a subsidiary which 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 and control and earnings are held by one or more disabled veterans. (Mil. & Vet. Code § 999(b)(7)(A)(i).)
  - 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 concern.
  - 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 corporation, foreign firm, or other foreign-based business.
  - d. It is a contractor, subcontractor or supplier that performs a "Commercially Useful Function" in providing services or goods that contribute to the fulfillment of the contract requirements.
    - i) "Commercially Useful Function" is defined as a person or entity doing all of the following: 1) Is responsible for the execution of a distinct element of the work of the contract (including the supplying of services and goods); 2) Carries out its obligation by actually performing, managing or supervising the work involved; 3) Performs work that is normal for its business services and functions; 4) Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment; and 5) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices. (Tit. 2 CCR § 1896.71(b).)

- ii) It is not a “Commercially Useful Function” if the DVBEs role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DVBE participation. (Mil. & Vet. Code § 999(b)(5)(B); Tit. 2 CCR § 1896.71(c).)

Note: The State Treasurer’s Office certifies DVBEs for contracts for professional bond services.

**B. Control**

As applied to “ownership (or management) and control” of DVBE means the DVBE owner(s) and or DVBE manager(s) must demonstrate expertise specifically in the firm’s field of operation in controlling the overall destiny and the day-to-day operations of the firm. Office management, clerical, or other experience unrelated to the firm’s field of operations is not sufficient to establish control. The control is comprised of two parts: Managerial and Operational. (For more detail see 2 CCR § 1896.81(c-i).)

**C. Certification**

DVBEs must be certified by DGS/OSDS. DVBE status can be verified by accessing the DGS/OSDS web page

<https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>).

Note: By regulation, DVBEs have until 5:00 p.m. (PST) on the bid due date to submit a complete paper certification application. Online applications may be submitted up until 11:59 pm (PST) on the bid due date. If certified they have eligibility. However, the firm may not have a copy of their DGS/OSDS certification approval and should state that their certification is pending. Verification can then be made by the agency with DGS/OSDS.

**8.15 DVBE BID INFORMATION  
(Rev 04/22)**

- A. Once the decision has been made to include the DVBE participation requirements in the contract, detailed DVBE specifications must be included in the IFB/RFP. Most agencies have developed standard DVBE specifications. Specifications should include a provision requiring the bidder to comply with rules, regulations, ordinances, and statutes that apply to the DVBE program as defined in Military & Veterans Code sections 999 and 999.5(d). If an agency does not have such specifications or if there is any question about the sufficiency of the specifications used by the agency, the agency should consult with DGS PD.
- B. In evaluating program compliance by the bidder, the awarding agency must review the activities to be performed by any DVBEs proposed to participate in the contract to assure that the DVBE performs a “Commercially Useful Function” as

defined in SCM 1, section 8.14 A. 2. (d)(e). For equipment rental bids, special rules apply to DVBEs which rent equipment or DVBEs which are found to be “equipment brokers” within the meaning of Mil. & Vet. Code § 999.2(b)(3).

- C. Based on the evaluation, the awarding agency will determine whether the bidder has complied with the DVBE participation program requirements. If a bidder fails to meet the participation program requirements, the bidder must be deemed non-responsive and is not eligible for the contract award.

Note: A common mistake bidders make is to state that no subcontractors are needed and that goals are not applicable, offering that all the work can be done by the bidder with its own resources. Bidders should be warned that this type of response will render their bid non-responsive if the solicitation has a DVBE requirement.

## **8.16 MANAGEMENT OF DVBE CONTRACT REQUIREMENTS (Rev 04/22)**

### A. Compliance

1. The awarding agency shall establish a method of monitoring adherence to the goals. Examples of monitoring methods include:
  - a. Random verification of contacts made to solicit certified DVBE's.
  - b. Review of job related bid evaluation criteria and how it was applied to subcontractor/supplier bids.
  - c. Contacting DVBEs listed for participation upon award of contract and during performance to ensure their participation.
  - d. Evaluate Commercially Useful Function performance of DVBE(s) participating on the contract.
  - e. Ensure the DVBE substitution request process is followed when applicable per CCR section 1896.73.
  - f. Post award audits.
2. Awarding agencies must investigate and report the following program violations to the DGS-OSDS. The DGS/OSDS may suspend the violator from doing business with the state and may forward the investigative report to the Attorney General for possible action. It is unlawful for a person or firm to:
  - a. Knowingly and with intent to defraud, fraudulently obtain or retain certification as a DVBE.
  - b. Willfully and knowingly make a false statement with the intent to defraud, to influence certification of any entity as a DVBE.

- c. Willfully and knowingly obstruct an investigation regarding DVBE certification.
  - d. Knowingly and with intent to defraud, obtaining or attempting to obtain public moneys to which the person is not entitled under the DVBE Participation Program.
  - e. Knowingly and with intent to defraud, fraudulently represent DVBE participation in order to obtain or retain a bid preference or State contract.
  - f. Knowingly and with intent to defraud, represents that a Commercially Useful Function is being performed by a DVBE in order to obtain or retain a bid preference. (Mil. & Vets. Code § 999.9(a)(6).)
  - g. Willfully and knowingly make a statement, declaration or other document, which is false as to any material matter.
  - h. Willfully and knowingly aid or assist in the preparation or presentation of a false document.
  - i. Willfully and knowingly fail to file any declaration or notice required by Mil. & Vet. Code § 999.2.
  - j. Establish or cooperate in the establishment of, or exercise control over, a firm found to have violated the above.
3. Violators are guilty of a misdemeanor and may also be liable for a civil penalty, including attorney's fees and costs incurred by the awarding agency or DGS. Additionally, violators shall be suspended from bidding on, or participating as a contractor, subcontractor, or supplier in any State contract or project. And furthermore, the awarding agency at its discretion may terminate existing contracts with the violator.
  4. Prior to reporting an alleged violation of Military & Veterans Code section 999 or PCC § 10115.10 to the DGS/OSDS awarding agencies must investigate the alleged violation and must prepare a written report of their findings. The written report must also include a recommendation for action to be taken commensurate with the awarding agency's findings and must be submitted to the DGS/OSDS within 60 days of notification to the awarding agency of the alleged violation.
  5. For contracts with DVBE goals, agencies should include language such as the following to assist in verifying compliance:
 

“Contractor agrees to certify on Prime Contractor's Certification DVBE Subcontractor Report (Form STD 817) that DVBE subcontractor participation under this agreement is in compliance with the goals specified at the time of award of contract or with any subsequent amendment. If for this Contract the Contractor made a



commitment to achieve the DVBE participation goal, the Department will withhold \$10,000 from the final payment, or the full final payment if less than \$10,000, until the Contractor complies with the certification requirements of Military and Veterans Code Section 999.5. A Contractor that fails to comply with the certification requirement shall, after notice, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days but not more than 30 calendar days from the date of notice, the prime contractor refuses to comply with the certification requirements, the department shall permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000. The Contractor shall provide proof of payment for the work performed by the DVBE subcontractor(s) upon Department's request."

B. Substitution of DVBE Subcontractors (Mil. & Vet's § 999.5(e))

1. After award of a contract, the successful bidder/contractor must use the DVBE subcontractors and/or suppliers proposed in the bid or proposal to the State unless a substitution is requested and approved. The bidder/contractor must request the substitution in writing to the awarding agency and both the awarding agency and DGS/OSDS must approve the substitution in writing prior to commencement of any work by the proposed subcontractor/supplier. The substitution request must comply with applicable regulations (see Tit. 2 § 1896.73(b)), including:
  - a. A written explanation of the reason for the substitution.
  - b. The name and certification number of the business being substituted and name and certification number of the proposed replacement.
  - c. A copy of the written notice issued to the DVBE with proof of delivery.
  - d. A copy of the DVBE's consent or opposition to the substitution, and any hearing decision if applicable.
  - e. A written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall contract that the substitution business will perform.
  - f. Completed substitution request form and supporting documentation will be submitted by the awarding department's Disabled Veteran Business Enterprise Advocate to DGS/OSDS for approval.
2. The California Code of Regulations (CCR), Title 2, section 1896.73 and Public Contract Code section 4107 (for public works) provide the current requirements for awarding departments to approve the substitution of a DVBE subcontractor. Departments shall follow the processes set forth in 2 CCR § 1896.73 and PCC § 4107 (for public works) when a prime contractor requests the substitution of a DVBE subcontractor with the added provisions that:

- a. Only another DVBE subcontractor shall be considered to replace a DVBE subcontractor; and
    - b. The awarding department shall obtain final approval to replace a DVBE subcontractor from DGS/OSDS.
  3. The request for substitution of DVBE and the awarding agency's approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (PCC §§ 4100, et seq.) or any other contract requirements relating to substitution of subcontractors.
  4. Prior to the approval of the prime contractor's request for substitution, the awarding agency, or its duly authorized officer, must give notice in writing to the listed subcontractor of the prime contractor's request to substitute and the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor.
  5. The listed subcontractor who has been so notified will have five (5) working days within which to submit written objections to the substitution of the awarding authority. Failure to file these written objections will constitute the listed subcontractor's consent to the substitution.
  6. If written objections are filed, the awarding authority shall give at least five (5) working days' notice in writing to the listed subcontractor of a hearing by the awarding agency on the prime contractor's request for substitution.
- C. Contract Completion Report – Prime Contractor's Certification of Payments to DVBE Subcontractor(s)
1. Upon completion of an awarded contract for which a commitment to achieve DVBE participation was made, an awarding department shall require the prime contractor that entered into a subcontract with a DVBE to certify to the awarding department on the Prime Contractor's Certification DVBE Subcontractor Report Form STD 817 all of the following:
    - a. The total amount the prime contract received under the contract;
    - b. The name and address of the DVBE that participated in the performance of the contract and contract number;
    - c. The amount and percentage of work the prime contractor committed to provide to one or more DVBEs under the requirements of the contract and the amount each DVBE received from the prime contractor;
    - d. That all payments under the contract have been made to the DVBE. (See Mil. & Vets Code §999.5(d).) Upon request by the awarding department, the prime contractor shall provide proof of payment for the work.

2. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of \$2,500 and the maximum amount of \$25,000. An action for a civil penalty 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. (Mil. & Vets § 999.5(e).)
3. The awarding department shall keep the certification on file. (Mil. & Vets § 999.5(e).) The awarding department shall maintain all records of information provided by the prime contractor pursuant to Section 999.5 and shall establish appropriate review procedures for those records to ensure the accuracy and completeness of the award amounts and paid amounts reported. The records shall be maintained in a manner that facilitates access and review by external auditors. Records collected shall be retained for a minimum of six years after collection.
4. The awarding department shall withhold \$10,000 from the final payment, or the full final payment if less than \$10,000, until the prime contractor complies with the certification requirements above. A prime contractor that fails to comply with the certification requirement shall, after notice, be allowed to cure the defect. Notwithstanding any other law, if, after at least 15 calendar days but not more than 30 calendar days from the date of notice, the prime contractor refuses to comply with the certification requirements, the awarding department shall permanently deduct \$10,000 from the final payment, or the full payment if less than \$10,000. Notwithstanding any other law, an awarding department shall not withhold more than the amount specified on the final payment of any DVBE for the purposes of ensuring compliance with the certification requirements of MVC 999.5.

#### D. Audit

The DVBE regulations require inclusion of an audit clause in the contracts sufficient to permit audit for compliance with DVBE requirements. The audit clause contained in SCM 1, section 7.50 meets this requirement.

### **8.17 DVBE INCENTIVE PROGRAM** **(Rev 04/22)**

- A. All competitive solicitations must contain a DVBE incentive if the solicitation includes the DVBE program requirement, unless an exemption for the incentive is approved. Competitive solicitations exempted from the DVBE program requirement may include the DVBE incentive.
- B. The DVBE incentive is an incentive between 1% and 5%.
  1. The incentive is applied during the evaluation process for responsive bids from responsible bidders proposing the percentage(s) of DVBE participation for the incentive(s) specified in the solicitation.

2. The solicitation document may provide an incentive scale providing a range of incentive(s) (1% to 5%) for bidders offering a specified participation level(s).
3. A department's highest ranking executive officer or his/her designee may exempt a solicitation from the incentive using the DVBE Exemption Request Form STD 816 with a full and complete written justification as long as such exemption does not prevent achievement of a department's DVBE participation goal. A copy of the written exemption should be included with the contract documents when submitted for approval by DGS/OLS.
4. Departments must use the STD 816 unless they obtain approval from DGS/OSDS to use an alternative form. A request for exemption must explain the necessity for use of an alternative form and demonstrate the alternative form meets all STD 816 requirements and complies with DVBE regulations.

C. Low price awards:

1. The minimum incentive is 1% with or without a cap.
2. Use of a higher incentive percentage not to exceed 5% is allowed for a solicitation based upon the agency's need to meet its DVBE program goal.
3. The incentive is applied by reducing the bid price by the amount of incentive as computed from the lowest responsive bid price submitted by a responsible bidder.
4. This incentive is for evaluation purposes only.
5. Application of the incentive shall not displace an award to a small business with a non-small business.
6. A department's highest ranking executive officer or his/her designee may place a cap on identified solicitations of not less than \$100,000 for the incentive and/or \$100,000 for all combined incentives and preferences. Reference to the cap must be included in the solicitation document and documentation of the executive officer/designee's written approval of the cap should be included with the contract documents when submitted for approval by DGS/OLS.

D. High score awards:

1. The incentive shall be between 1% and 5% of the total possible available points, not including points for socioeconomic incentives or preferences.
2. The incentive points are included in the sum of non-cost points.
3. The incentive points cannot be used to achieve any applicable minimum point requirements.

- E. DGS regulations are located at 2 CCR §1896.99.100 et seq.

## **8.18 ANNUAL REPORT OF DVBE PARTICIPATION** **(Rev 04/22)**

- A. Due Date and General Content

Public Contract Code section 10111 requires that DGS publish an annual statewide contracting activity report that consolidates information for various categories, including DVBE usage. To assist in this effort, all agencies must provide their Consolidated Annual Report for State Contracting report (Forms DGS PD 810) to the DGS/OSDS Reports Coordinator no later than close of business on August 1 of each year. Additional information regarding annual reporting can be found on the DGSPD website (<https://www.dgs.ca.gov/PD/services>).

## **8.20 CERTIFIED SMALL AND MICROBUSINESS PROGRAM** **(Rev 04/22)**

- A. Definition

Small business means a business certified by DGS/OSDS in accordance with GC § 14837 (d)(1) and 2 CCR 1896.12(a).

- B. Small business for the purpose of public works means a business that met the qualifying criteria for small business pursuant to 2 CCR section 1896.12(a)(1)-(4) and, in addition, is a business that together with affiliates does not exceed 200 employees and an average gross receipts of \$36 million. (GC § 14837(d)(1)(B); 2 CCR 1896.13.)

- C. Microbusiness means a small business certified by DGS/OSDS in accordance with GC § 14837 (d)(2) and 2 CCR 1896.12(b).

- D. A certified small business, a small business for the purpose of public works, or microbusiness shall provide goods or services that contribute to the fulfillment of the contract requirements by performing a “Commercially Useful Function.”

Commercially Useful Function is defined as: 1) Is responsible for the execution of a distinct element of the work of the contract (including the supplying of service and goods); 2) Carries out its obligation by actually performing, managing or supervising the work involved; 3) Performs work that is normal for its business services and functions; 4) Is responsible, with respect to products, inventories, materials and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment; and 5) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

A small or microbusiness contractor, subcontractor or supplier is not performing a “Commercially Useful Function” if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to

obtain the appearance of small business or microbusiness participation. (GC § 14837(d)(4); Tit. 2 CCR § 1896.15.)

E. Eligibility

A business must be formally certified by DGS/OSDS to be considered for the small business, a small business for the purpose of public works, or microbusiness preference.

F. Benefits of Certification

A certified small business or microbusiness is entitled to claim a 5% preference in bidding on State contracts as explained in SCM 1, section 8.21. Small business for the purpose of public works can claim a 5% preference only when bidding on State public works contracts. Certified small business, small business for the purpose of public works, or microbusinesses are also entitled to interest penalties paid by the State for late payment of invoices. The penalties are greater for certified small business or microbusinesses than for non-certified businesses.

G. Nonprofit Veteran Service Agency Certification

Nonprofit Veteran Service Agencies (NVSA) can qualify for a small business preference if DGS/OSDS certifies that the NVSA meets the requirements of Mil. & Vet. Code § 999.50, et seq. Upon certification, an NVSA participating as a prime bidder is eligible for the 5% small business bidding preference if they have submitted a timely, responsive bid and have been determined to be a responsible bidder. An NVSA is not subject to the same standards as other certified small businesses. NVSA standards are identified in Mil. & Vet. Code § 999.51(a)(3).

H. Each State agency, with an annual contracting program of \$100,000 or more, must appoint a State Contracting Small Business Advocate to act as a liaison for small business (GC §14846).

I. Upon completion of a contract for which a commitment to achieve SB or DVBE participation was made, the contractor shall report to the awarding department the actual percentage of SB and DVBE participation that was achieved. (GC § 14841; GTCs.)

## **8.21 SMALL BUSINESS PREFERENCE PROGRAM (Rev 04/22)**

A. How the Preference Works (see 2 CCR §1896.8)

1. Certified small businesses or microbusinesses can claim the 5% preference when submitting a bid on a State contract. A non-small business may receive a preference of 5% if the business commits to subcontract at least 25% of its net bid price with one or more small businesses or microbusinesses. The 5% preference is used only for computation purposes, to determine the winning bidder and does not alter the amounts of the resulting contract. The value of the preference is limited to \$50,000

when a contract award is based upon award to the lowest compliant bid. A contract awarded on the basis of the 5% preference is awarded to the small business, microbusiness or non-small business for the actual amount of its bid.

2. An example of the method used in determining the successful bidder for an IFB, or the cost component of an RFP Primary follows:

<b>Bidder</b>	<b>Bid Amount</b>	<b>Bid after preference</b>	
One	\$30,750	\$30,750	Claims small business or microbusiness status but is not a certified small business or microbusiness; does not claim small business subcontractor participation
Two	\$28,975	\$28,975	Does not claim to be a small business or microbusiness, and does not claim subcontractor participation
Three	\$29,520	\$28,071.25	Claims non-small business subcontractor preference and does commit to 25% certified small business or microbusiness participation
Four	\$29,870	\$28,421.25	Claims small business or microbusiness status and is a certified small business or micro-business

For evaluation purposes, 5% of the low responsible bid of \$28,975 would be \$1,448.75 ( $\$28,975 \times .05$ ); that amount would be subtracted from the bids of Three (for a bid after preference total of \$28,071.25) and Four (for a bid after preference total of \$28,421.25). The contract would be awarded to bidder Four for \$29,870, as the non-small business subcontractor preference cannot remove an award from a certified small business or microbusiness.

3. The method used in determining the successful bidder for an RFP Secondary follows:
  - a. Calculate the “earned” score for all bidders.
  - b. If the highest scored proposal is from a non-certified small business or microbusiness, then:

- i. Calculate 5% of the highest responsible bidder's total score.
  - ii. Add the amount calculated above to the score of each of the certified small business or microbusinesses. This new amount is the total score.
  - iii. Award of the contract must go to the bidder with the highest point count.
4. An example of applying the small business preference to an RFP Secondary follows:

Bidders (*Indicates certified small business)	A*	B	C*	D
Criterion 1(15 Max. points)	11	14	13	12
Criterion 2 (25 Max. points)	21	21	14	19
Criterion 3 (30 Max. points)	18	15	15	18
Cost (30 Max. points)	29.1	30.0	28.3	29.7
(cost points awarded are based on these bid amounts)	(\$103)	(\$100)	(\$106)	(\$101)
Total "earned" points for each bidder	79.1	80.0	70.3	78.7

Bidder B's was the highest scored proposal, a non-certified small business or microbusiness. Therefore points must be re-apportioned after application of the 5% calculation of B's point score. B's bid received 80.0 points. 5% of 80 is 4. All bids from certified small business or microbusinesses will receive 4 additional points. All bids from eligible non-small businesses will receive 4 additional points.

Point awards prior to preference points	79.1	80.0	70.3	78.7
Preference points	4.0		4.0	
Total final points for each bidder	83.1	80.0	74.3	78.7

The highest scored proposal is now the proposal received from A, a certified small business. The contract award amount will be A's original bid amount.



## B. Small Business Preference Procedures

1. Notice of availability of the Small Business Preference Program must be included in all IFBs and RFPs. Agency staff should be familiar with the program in order to clearly explain it to bidders. Firms needing more information should be referred to the DGS/OSDS website.
2. Bidders claiming the small business preference may be requested, but not required, to submit a copy of their certification approval from DGS/OSDS with the bid or proposal. Failure to provide a copy of their certification approval in their response is not a material deviation. A bidder may claim the preference if the bidder submits a complete application for certification to the DGS/OSDS by 5:00 p.m. PST on the bid due date; online applications may be submitted up until 11:59pm (PST) on the bid due date. Therefore, the awarding agency should check the status of the application with DGS/OSDS before awarding the contract. An awarding agency shall evaluate the activities to be performed by any certified small or microbusiness on the proposed contract to assure that the certified small or microbusiness is performing a “commercially useful function” as defined in SCM 1, section 8.20 C.

## C. Procedures for Tie Bids Between a Small Business and DVBE Small Business

In the event of a precise tie between the low responsible bid of a certified small business and the low responsible bid of a certified disabled veteran owned business that is also a small business, the contract must be awarded to the disabled veteran owned small business. (GC § 14838 (f); 2 CCR 1896.8(f)).

## **8.22 NON-SMALL BUSINESS PREFERENCE PROGRAM (Rev 11/04)**

GC § 14838(b)(1)(2) provides for a non-small business preference, as defined.

The preference to a non-small business bidder that commits to small business or microbusiness subcontractor participation of 25% of its bid price shall be 5% of either the lowest, responsive, responsible bidder’s price (IFB) or the highest responsive, responsible bidder’s total score (RFP secondary). A non-small business, which qualifies for this preference, may not take an award away from a certified small business. The small business regulations are located at 2 CCR 1896. (See example in 8.21.)

## **8.23 PROMPT PAYMENT OF SMALL BUSINESSES (Rev 04/22)**

### A. Reason for the Program

To encourage expeditious invoice payment, the law provides for assessment of a penalty for late payments of invoices from contractors, including certified small businesses on all contracts and nonprofit organizations registered with DGS/OSDS (contracts less than \$500,000) (GC § 927.6). As part of the

implementation of this law, every solicitation should alert the bidder about this program

B. Description of the Program

The Prompt Payment Act (GC § 927, et seq.) applies to both small and non-small businesses. However, the penalty calculation differs for small businesses as follows. The penalty is calculated, for certified small businesses and non-profit organizations, at a rate of 10 percent above the U.S. Prime Rate on June 30 of the prior fiscal year of the amount outstanding per calendar day from the required payment date.

Agencies must automatically calculate and pay the penalties, without requiring the contractor to submit an invoice for these penalty amounts (GC § 927.6).

Note: The time starts to run when the invoice is first received by the agency, not when it is received by your business or accounting office.

C. Involvement of DGS Office of Small Business and DVBE Services (DGS/OSDS)  
DGS/OSDS serves as a resource for State agencies and businesses in the implementation of the prompt payment program. State agencies must be sure that a small business is certified before paying the higher interest penalty and that may require contacting DGS/OSDS. The DGS/OSDS does not investigate, arbitrate, or advocate for business firms or State agencies in the resolution of payment disputes.

DGS/OSDS works with agency Small Business Advocates to provide information about the Act and assistance to contractors who have difficulty resolving payment problems.

D. Contracting Consideration

The subject of prompt payment should be considered during the contracting process to ensure that the contract gives clear and accurate instructions directing where invoices are to be sent. Those employees who will be involved in the receipt and approval of the invoices need to be familiar with the program. In addition, when an award is made to a certified small business or microbusiness, the contract office should appropriately flag the copy of the contract sent to the accounting office.

### **8.30 TARGET AREA CONTRACT PREFERENCE ACT (TACPA) (Rev 1/14) [\*\* Pending Update to be Released Soon \*\*]**

A. Introduction

The Target Area Contract Preference Act (TACPA) is a preference program designed to stimulate business in geographic areas determined to be economically distressed. The Procurement Division, Dispute Resolution and Preference Programs Section administers this program.

B. Applicability to contracts

The TACPA preference applies to service contracts that meet specific criteria. The criteria are described in Table 8.2.

**Table 8.2**

Criterion	TACPA GC § 4530, et seq.
Estimated Contract Amount: The dollar threshold or applicability	More than \$100,000 GC §§ 4531 and 4534; 2 CCR § 1896.34,  All responsive bids or proposals must be in excess of \$100,000 for the TACPA preferences and incentives to apply.  2 CCR § 1896.37
Excluded Contracts: Contracts not covered by the program	Contracts with a designated worksite GC § 4534
Geographic Areas: The worksite to be used by the contractor to qualify for the preference must be located within a designated area	Distressed areas as identified by the Office of Planning and Research and further defined in GC § 4532(d).  GC § 4534
Company Base	California  GC §§ 4531, 4532(h) and 4534; 2 CCR § 1896.30(f)
Percent of Work: The percentage of the contracted work that the contractor must perform at the qualifying worksite	Not less than 90% of the total labor hours required to perform the contract.  GC § 4534
Worksite Preference: The percentage of preference associated with the worksite	5% preference on the price submitted GC § 4534;  2 CCR 1896.34

<p>Work Force Preference: An additional preference of 1% to 4% available if the contractor agrees to hire certain identified persons equal to a percentage of its work force during the period of contract performance</p>	<p>Percentage of persons with high risk of unemployment hired in relation to work force*, and corresponding preference percentage of the price offered by the lowest responsible bid or the lowest responsible proposal:</p> <table border="0"> <tr> <td>5 to 9*</td> <td>1%</td> <td>10 to 14*</td> <td>2%</td> </tr> <tr> <td>15 to 19*</td> <td>3%</td> <td>20 or more*</td> <td>4%</td> </tr> </table> <p>GC § 4534.1</p>	5 to 9*	1%	10 to 14*	2%	15 to 19*	3%	20 or more*	4%
5 to 9*	1%	10 to 14*	2%						
15 to 19*	3%	20 or more*	4%						
<p>Preference Limits: The highest preference that can be given</p>	<p>9% (combination of the 5% Worksite Preference with the maximum 4% Work Force Preference) up to \$50,000 GC §§ 4534, 4534.1 and 4535.2(a)</p>								
<p>Maximum Combined Preferences and Incentives offered under all provisions of law</p>	<p>15% (combined cost of all preferences and incentives) up to \$100,000 GC § 4535.2(a)</p>								

C. Preference Procedures

The TACPA preference notice and request form STD 830 and the DGS/PD 526 must be included in all IFBs and RFPs when the estimated cost exceeds \$100,000, unless the worksite is specified in the contract. To receive the preference, the bidder must complete the forms and certify to perform the contract work as specified. This commitment must be enforced through conditions contained in the contract (GC § 4535).

Agencies should contact the DGS/PD Dispute Resolution and Preference Program Section for assistance in evaluating these preference applications.

Standard contract language for TACPA can be found at the [Procurement website](http://www.pd.dgs.ca.gov/edip) of <http://www.pd.dgs.ca.gov/edip>.