

## CERTIFICATION PROGRAM LEGISLATION

The following legislation pertains to the Department of General Services' small business (SB), small business for the purpose of public works (SB-PW), and disabled veteran business enterprise (DVBE), Nonprofit Veteran Service Agency (NVSA) certification programs.

### Governors Executive Orders

- Small Business [S-02-06](#)
  - Improve small business participation in State contracting.
- DVBE [D-43-01](#)
  - Ensure and improve DVBE participation within state contracting.

### Small Business Legislation

#### 2021-2022 Session

- AB 1574 (Committee on Jobs, Economic Development, and the Economy (JEDE)) [HTML](#) [PDF](#)
  - Modifies the law to require all departments to make continuous efforts to expand the pool of SB/MBs by seeking out and identifying businesses that:
    - have not previously done business with the state
    - are not regularly used in state contracts, and
    - include SB/MBs listed in state solicitations
  - Added new law requiring awarding departments to report all program abuse allegations
  - Added new laws for allegations of violations of an intent to defraud or fraudulently represent a CUF is being performed to obtain a preference or contract:
    - allows a civil action to be brought by any city/county/district attorney or city counsel or the Attorney General
    - the penalty imposed shall be a civil judgement
    - civil penalties include those in MVC 999.9(b), including all costs and attorney's fees incurred city/county/district attorney or city council or the Attorney General and the awarding department and the Department of General Services (DGS)
    - a city/county/district attorney or city counsel shall not bring a civil penalty if DGS has concluded an administrative action for the same violation. But this does not pertain to a civil action brought by the Attorney General.
    - for the same violation a monetary penalty cannot be imposed by both an administrative action and a civil action. However, DGS may

impose other penalties through an administrative action regardless of the outcome of a civil action.

- a city/county/district attorney or city counsel and the Attorney General shall notify DGS before starting an action under this law

### **2017-2018 Session**

- SB 605 (Galgiani) [HTML](#) [PDF](#)
  - Revises upward existing 3-year gross annual receipt dollar amount threshold for small business to \$15 million and \$5 million for microbusiness.
  - Revises upward existing 3-year gross annual receipt dollar amount threshold for small business to \$15 million and \$5 million for microbusiness.
  - Adds, for purposes of public works and engineering contracts for public works, businesses with 200 or fewer employees and average annual gross receipts of \$36 million over previous 3 years as a new small business certification category.
  - Sets forth Legislative findings, declarations and intent of enactment, effective January 1, 2019.
  - Amendments to GC sections 14837(d) and 14838(g).

### **2013-2014 Session**

- AB 383 (Wagner) [HTML](#) [PDF](#)
  - Maintenance of the codes.
  - This law made non-substantive changes in various provisions of the law to effectuate recommendations made by the Legislative Counsel.
  - Amendments to GC section 14837(a)-(e).

### **2011-2012 Session**

- SB 1510 (Wright) [HTML](#) [PDF](#)
  - Modified existing law respecting the Commercially Useful Functions requirement of both the Small Business Procurement and Contract Act and the California Disabled Veteran Business Enterprise Program.
- AB 1783 (Perea) [HTML](#) [PDF](#)
  - DGS has sole responsibility of certifying and determining SB eligibility.
  - Local agencies will have access to DGS's list of certified small businesses.
  - State level certified small business are included as a SB for local preference and goal purposes, and local agencies are authorized to set additional guidelines for local preference purposes.

### **2010-2011 Session**

- AB 177 (Ruskin) [HTML](#) [PDF](#)
  - Authorizes revocation action on Small Business and Disabled Veteran Business Enterprise firms (DVBE) suspended from doing business with the State of California.

- Increases penalties for program abuse.
- Authorizes the administering agency to forward cases with sufficient grounds to the Attorney General for further action.
- AB 2249 (Ruskin) [HTML](#) [PDF](#)
  - Requires those business enterprises to submit certain information under penalty of perjury.
  - Contains language regarding unconditional ownership by disabled veteran.
  - Established authority for administering agency, if just cause, to have applicant complete and submit federal tax form to obtain federal transcript tax return.

### **2003-2004 Session**

- AB 323 (Parra) [HTML](#) [PDF](#)
  - Allows Nonprofit Veteran Service Agency (NVSA) to be certified as a small business and entitles the entity to all small business benefits providing certain eligibility requirements are met.
- AB 2379 (Horton) [HTML](#) [PDF](#)
  - Ineligibility to transact business with state for Small Business program abuse increased from three to 24 months to six to 36 months.
- AB 669 (Cohn) [HTML](#) [PDF](#)
  - A small business, microbusiness, or DVBE prime or subcontractor must perform a "commercially useful function" related to an awarded contract's specifications.
  - Penalties for fraudulent misrepresentation of a small business performing a CUF and/or for misrepresenting the small business' participation for obtaining or retaining a contract.

### **2001-2002 Session**

- AB 1084 (Wesson) [HTML](#)
  - Microbusiness definition.
  - Up to 5 percent bid preference for non-small business prime contractors who use certified small businesses to meet contract's small business participation goal.
  - Requires 5 percent small business bid preference be applied to bids awarded on cost and points.
  - Requires state agencies to annually report contract participation by microbusiness as well as by race, ethnicity, and gender on specific contracts.
- AB 2567 (Committee on Business and Professions) [HTML](#) [PDF](#)
  - Informal bidding process for construction contracts when awarding to a small business (also known as the "SB/DVBE Option") – contract

threshold changed from \$200,000 to \$100,000 (plus CPI) (per State Contract Act).

### **1999-2000 Session**

- AB 1936 (Papan) [HTML](#) [PDF](#)
  - State has 45-day processing time for prompt payment.
- AB 2890 (Consumer Protection Committee) [HTML](#) [PDF](#)
  - Dollar threshold for informal bidding process with small business (also known as the "SB/DVBE Option") changed to \$5,001 to \$99,999.

### **1997-1998 Session**

- AB 170 (Papan) [HTML](#) [PDF](#)
  - Prohibits state agencies and vendors from waiving or changing existing prompt payment penalty fees due to the state agency's failure to pay on time.
  - Supplier does not have to submit a separate claim for late payment penalties.
- AB 835 (Wright) [HTML](#) [PDF](#)
  - Allows state agencies to use informal competitive bidding process for contracts of \$2,500 up to \$49,999, when contract is awarded to a small business, after obtaining a price quote from at least two small businesses. (Also known as the "SB/DVBE Option".)
  - Requires state agencies to include small business 5 percent bid preference in all information technology solicitations.
  - Modifies annual small business contract activity report to Legislature to include number of employees.
- AB 2275 (Kuykendall) [HTML](#) [PDF](#)
  - State agencies must pay properly submitted, undisputed invoices within 45 days or automatically calculate and pay penalties.
- AB 2405 (Leach) [HTML](#) [PDF](#)
  - Establishes small business advocate in DGS and each state agency.
- AB 2505 (Olberg) [HTML](#) [PDF](#)
  - Establishes new small business definition and allows for updating as necessary, by regulations, to reflect the changing business environment.

## DVBE Legislation

### 2021-2022 Session

- AB 1574 (Committee on Jobs, Economic Development, and the Economy (JEDE)) [HTML](#) [PDF](#)
  - Modifies the law to require every bid with DVBE subcontractor participation to include in the general conditions the California DVBE certification number and contact information.
  - Added a new law to require submission of a certification, signed under penalty of perjury, that the portion of the work that will be conducted by each DVBE subcontractor performs a Commercially Useful Function (CUF).
  - Added new laws for allegations of violations of an intent to defraud or fraudulently represent a CUF is being performed by a DVBE to obtain a preference or contract:
    - allows a civil action to be brought by any city/county/district attorney or city counsel or the Attorney General
    - the penalty imposed shall be a civil judgement
    - civil penalties include those in MVC 999.9(b), including all costs and attorney's fees incurred city/county/district attorney or city council or the Attorney General and the awarding department and the Department of General Services (DGS)
    - a city/county/district attorney or city counsel shall not bring a civil penalty if DGS has concluded an administrative action for the same violation. But this does not pertain to a civil action brought by the Attorney General.
    - for the same violation a monetary penalty cannot be imposed by both an administrative action and a civil action. However, DGS may impose other penalties through an administrative action regardless of the outcome of a civil action.
    - a city/county/district attorney or city counsel and the Attorney General shall notify DGS before starting an action under this law

### 2020-2021 Session

- SB 588 (Archuleta) [HTML](#) [PDF](#)
  - Requires an awarding department to withhold \$10,000, or the full payment if it is less than \$10,000, from the final payment on a contract until certification is received by the awarding department regarding DVBE participation and payment.
  - Requires the awarding department to give a prime contractor that fails to meet those certification requirements 15 to 30 calendar days to cure the defect. If not, the final payment is permanently deducted.

## 2019-2020 Session

- SB 230 (Brough) [HTML](#) [PDF](#)
  - Adds awarding departments shall not take credit if the Disabled Veteran Business Enterprise (DVBE) “is not certified at the time of the award”.
  - Modifies the law to require prime contractors to certify the percentage of work committed to the DVBE(s) and the amount each DVBE received from the prime and that all payments have been made to the DVBE.
  - Requires the prime to show proof of payments made if requested by the awarding department.
  - Expands law on DVBE substitution to require primes to use the DVBE stated in bid/proposal unless a written request to the awarding department is approved by both the awarding department and DGS prior to the commencement of work.
  - Removes provisions relating to prime contractor’s making “a good faith effort” to include DVBEs in contracting; and every contract subject to DVBE participation shall contain a provision requiring the contractor to adhere to the rules, regulations, ordinances and statutes that apply to the DVBE program.
  - Removes authority for awarding departments to adopt DVBE program regulations in an emergency; updates the duties of OSDs; wording changes from “a public” to “an awarded” contract.
  - Sets forth Legislative and State Audit findings of 2014 and 2019 to be effective January 1, 2020.
  - Amendments to sections GC 14839(a) and 14841, MVC 999.5(a) and PC 10230.
  
- SB 1365 (Committee on Veterans Affairs) [HTML](#) [PDF](#)
  - Requires an awarding department to retain and maintain all records of information provided by the prime contractor for contracts awarded for DVBE participation for a minimum of six years after collection.
  - To establish review procedures for those records to ensure accuracy and completeness of the award amounts and reported paid amounts.
  - The records shall be maintained and accessible for review by external auditors.
  - Sets forth State Audit findings of 2013 to be effective January 1, 2020.
  - Adds new section to MVC 999.55.

## 2015-2016 Session

- AB 413 (Chavez) [HTML](#) [PDF](#)
  - Modified existing law respecting the provisions of the Disabled Veteran Business Enterprise Program applicable upon the death or permanent medical disability of a disabled veteran who was the majority owner of that enterprise.
  - Established the intent of the Legislature that applicable certification shall not establish any business advantage other than to permit the spouse or child to temporarily control and operate that business in survivorship

circumstances for 3 years from the date of death or certification of permanent disability.

### **2011-2012 Session**

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### **2010-2011 Session**

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  - Increases penalties for program abuse.
  - Authorizes the administering agency to forward cases with sufficient grounds to the Attorney General for further action.
- AB 2249 (Ruskin) [HTML](#) [PDF](#)
  - Requires those business enterprises to submit certain information under penalty of perjury.
  - Contains language regarding unconditional ownership by disabled veteran.
  - Established authority for administering agency, if just cause, to have applicant complete and submit federal tax form to obtain federal transcript tax return.

### **2009-2010 Session**

- AB 21 (Evans) [HTML](#) [PDF](#)
  - Eliminated the good faith effort.
  - Requires contractors to meet DVBE goals when specified in solicitations.
- SB 548 (Huff) [HTML](#) [PDF](#)
  - Requires the contractor to certify to the awarding department certain contract information and that all payments have been made to DVBE.
  - Authorizes the administering agency to oversee the DVBE substitution process.

### **2005-2006 Session**

- SB 115 (Florez) [HTML](#) [PDF](#)
  - This bill specifies that the Department of General Services is the administering agency of the California Disabled Veteran Business Enterprise Program, specifies the duties of the Department in establishing a uniform DVBE participation incentive process to be required by all state agencies when awarding contracts, and sets standards for meeting the program's participation goals.

- Requires the department's small business advocate to provide these services to certified small businesses and certified disabled veteran business enterprises.

### **2003-2004 Session**

- AB 669 (Cohn) [HTML](#) [PDF](#)
  - A small business, microbusiness, or DVBE prime or subcontractor must perform a "commercially useful function" (CUF) related to the awarded contract's specifications.
  - Increased penalties for fraudulent misrepresentation of a DVBE performing a CUF and/or for misrepresenting the DVBE's participation for obtaining or retaining a contract.
  - The disabled veteran must be domiciled in California.
- SB 1008 (Machado) [HTML](#) [PDF](#)
  - Limited liability companies must be wholly owned by one or more disabled veterans.
  - A DVBE that rents equipment to an awarding department is considered an equipment broker, unless one or more disabled veterans own 51 percent of the equipment with evidence to support the fact. This includes submitting to the Office of Small Business and DVBE Certification (OSDC), a copy of the complete personal federal income tax return for each of the disabled veteran owners.
  - Awarding department shall not rely on a DVBE's certification status if the agency knows that the DVBE does not maintain certification requirements.
  - State funds used for equipment rented from equipment brokers cannot be credited towards the 3 percent goal.
  - A DVBE broker awarded a contract under the 3 percent goal provisions must disclose their broker status to the awarding agency prior to contract performance.
  - Disabled veterans must provide federal tax returns for DVBE certification consideration.
  - Penalties for fraud will be imposed.

### **2001-2002 Session**

- AB 737 (Oropeza) [HTML](#) [PDF](#)
  - Allows state agencies to use informal competitive bidding process for contracts between \$5,000 and \$99,999, when contract is awarded to a DVBE, after obtaining a price quote from at least two DVBEs. (Also known as the "SB/DVBE Option".)
- AB 941 (Florez) [HTML](#) [PDF](#)
  - Requires state agencies/departments to appoint a DVBE advocate. The appointed individual shall serve as both SB & DVBE advocate.
- SB 1045 (Polanco) [HTML](#) [PDF](#)



- Requires state agencies to submit annual DVBE contract & procurement activity report to Governor & Legislature.

### **1999-2000 Session**

- AB 409 (Dickerson) [HTML](#) [PDF](#)
  - Allows a certified DVBE to retain its status for up to three years after the death or permanent disability of the disabled veteran, if the DVBE is inherited or controlled by the disabled veteran's spouse or child, or by both. This would only apply to contracts entered into prior to the disabled veteran's death or permanent disability.
  - Dept. of Veterans Affairs to appoint advocate to oversee and report on the DVBE program.
  - Similar provisions to be added to Military and Veterans Code that are in Public Contract Code relating to 3 percent DVBE participation goal.
- AB 1633 (Committee on Veterans Affairs) [HTML](#) [PDF](#)
  - Requires any school district using funds allocated pursuant to the School Facilities Act of 1998 for school construction or modernization to have an annual 3 percent DVBE participation goal of the overall dollar amount expended each year by the school district.

### **Prompt Payment Legislation**

Senate Bill 856 was chaptered on October 19, 2010, and impacts California Government Code Sections 927 – 927.13 known as the [California Prompt Payment Act](#). The definition of a “small business” was modified to include GC 14837(d). Section 927.13 was added to include the timelines for payment processing by state agencies and the State Controller, the assessment of penalties and exceptions.