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| DEPARTMENT OF GENERAL SERVICES  OFFICE OF BUSINESS AND ACQUISITION SERVICES | DATE ISSUED:  08/02/2019 |
| **OBAS Memorandum 19-01** | EXPIRES:  Until Rescinded |
| TO:  **All DGS Staff**  SUBJECT:  **The Department of General Services' Small Business, Small Business for the Purpose of Public Works, Microbusiness and Disabled Veterans Business Enterprise First Policy** |  |
| REFERENCES:  Governor's Executive Order S-02-06 Governor's Executive Order D-43-01 Government Code § 14837 Government Code § 14838.5  Government Code § 14838.7 Military and Veteran s Code § 999 Military and Veterans Code § 999(a) Public Contract Code § 10105  State Contracting Manual Vol. F, 4.A1.2 State Contracting Manual Vol 1 5.80 |
|  | SUPERSEDES:  AO 14-02 |

**Purpose** The Department of General Services (DGS) reaffirms its commitment to the Small Business, Microbusiness and Disabled Veteran Business Enterprise community by revising its SB/DVBE first policy. This OBAS Policy revises and clarifies the requirements for contracting with Small Businesses (SB), Small Businesses for the purpose of Public Works (SB-PW), Microbusinesses (MB), and Disabled Veteran Business Enterprises (DVBE) first for goods, services, and IT goods and services.

**Policy** To ensure DGS meets statewide SB, SB-PW, MB, and DVBE participation goals; DGS requires all procurements from $2,500 to the cost limits allowed by the SB/DVBE option be procured from an SB, SB-PW, MB, or DVBE certified by the Office of Small Business and DVBE Services (OSDS) according to Government Code Section 14837 and Military and Veterans Code Section 999. The current cost limits allowed by the SB/DVBE option (Government Code§ 14838.5, Government Code§ 14838.7, and Public Contract Code§ 10105) are:

* $249,999.99
* $314,000.00 for public works

These dollar thresholds are subject to change and the current dollar thresholds allowed by law must be used. The dollar thresholds include all charges including, but not limited to, sales and use tax, finance charges, postage, handling charges, and shipping charges.

**Definitions**

**Background**

**SB/DVBE**

**Waiver Requirements**

For purposes of this memorandum the following are defined as:

* Procurement: Procurement includes any purchase or contract for DGS including CAL-Card purchases
* Purchaser: Purchaser is all DGS purchasers including OBAS Acquisition Analysts, CAL-Card holders, and Incidental Buyers, all of whom should hold the buyer role in Fl$Cal.

Governor's executive orders require that DGS meet the following annual statewide SB and DVBE purchasing goals:

* SB participation according to Governor's Executive Order S-02-06. This goal includes MB, SB and SB-PW participation.
* DVBE participation as mandated by Governor's Executive Order D-43-01 and Military and Veterans Code Section 999(a).

All procurements from $2,500 to the cost limit allowed by law and policy, unless listed in the "exempt procurements" section of this policy, will require an SB/DVBE waiver if not solicited to SB, SB-PW, MB, or DVBE. Purchasers will perform due diligence to use an SB, SB-PW, MB, or DVBE for all contracting opportunities prior to seeking a waiver from the SB/DVBE Advocate. Due diligence will include all of the following as applicable:

* Perform a comprehensive search via the OSDS certification data base
* Work with Original Equipment Manufacturers to identify SB, SB-PW, MB, and DVBE resellers
* Recruit potential SB, SB-PW, MB, and DVBEs to become certified
* Seek SB/DVBE Advocate assistance to locate SB, SB-PW, MB, or DVBEs

Purchasers must clearly document the research completed and steps taken to sufficiently justify waiving SB, SB-PW, MB, or DVBE requirements. Waivers based on cost will only be reviewed on a case-by-case basis to include considerations such as where cost is not fair and reasonable. All waivers are valid only for the individual contract being reviewed and approved by the SB/DVBE Advocate.

Where a particular good or service is purchased frequently and no SB, SB-PW, MB, or DVBE is able to provide this good or service, an extended waiver request may be granted. An extended waiver request extends the number of requisitions or time that the waiver is valid. The category may be the specialization of the good or service, location, or other factors specific to the circumstance as identified by the SB/DVBE Advocate. Extended waiver requests can be granted for a period of up to 3 years as determined by the Advocate.

In the absence of the SB/DVBE Advocate, the Chief of the Office of Business and Acquisition Services (or Acting Chief in the position of Staff Services Manager II) will serve as the SB/DVBE Advocate's delegated signatory.

**Exempt** Exemptions to the SB/DVBE first policy include:

# Procurements

1. Public Works contracts within 20% of the cost limits allowed by SB/DVBE option for public works.
2. Architectural landscape, engineering, environmental, land surveying, or construction project management services where Government Code Section 4525 et seq. is the exclusive method of award.
3. Most DGS approved exemptions already exempt from competitive bidding listed below including:

State Contracting Manual Volume 1 Section 5.80 (A) and (B):

* + Contracts of less than $5,000 where only per diem or travel expenses are to be paid. (A.2)
  + Emergency contracts (A.3)
  + lnteragency agreements (A.4)
  + Contracts with other public entities including state local or federal agency (A.5)
  + Contracts solely for the purpose of obtaining expert witness for litigation (A.6)
  + Contracts for legal defense, legal advice or legal services by an attorney or the attorney's staff (A.7)
  + Community Based Rehabilitation Program (CRP) (A.8).
  + Contracts for the development, maintenance administration or use of licensing or proficiency testing examinations. (A.10)
  + Service contracts using a DGS LPA (B.2(a))
  + Subvention and local assistance contracts (B.2(b))
  + Maintenance agreements under $250,000 per year for equipment that is under documented warranty or where there is only one authorized or qualified representative or where there is only one distributor in the area for parts and services under $250,000 per year (B.2(c))
  + Contracts where the state is unable to compete and select a different contract because a contractor has already been selected by a federal, state, city, county or other regulatory entity to perform a service in a specific geographical area (B.2(d))
  + Public entertainment contracts for State-sponsored fairs and expositions (B.2(e))
  + Contracts that can only be performed by a public entity as defined in Unemployment Insurance Code §605(b) (B.2(f))
  + Contracts for conference or meeting facilities, including room accommodations for conference attendees, not to exceed $250,000 (B.2(g))
  + Contracts for ambulance services (including but not limited to 911) when there is no competition because the contractor is designated by a local jurisdiction for the specific geographic region (B.2(h))
  + Contracts for emergency room hospitals, and medical groups, physicians, and ancillary staff providing services at emergency room hospitals, when a patient is transported to a designated emergency room hospital for the immediate preservation of life and limb and there is no competition because the emergency room hospital is designated by a local emergency medical services agency and medical staffing is designated by the hospital. This exemption covers only those services provided in response to the emergency room transport (B.2(i))
  + Contracts with health maintenance organizations (HMOs) through a cooperative agreement with the Centers for Medicare and Medicaid Services (CMS) to pay monthly premium payments for medical/Medicare eligible members, where services are essential or necessary for health and safety (B.2U))
  + Proprietary subscriptions, proprietary publications and/or technical manuals regardless of media format, up to $250,000. This includes access to preexisting proprietary research data through a non-IT services contract; however, "subscription" is not intended to include the performance of any personal services (such as, but not limited to, consulting, advice, research) (B.2(k))
  + Rental of proprietary postage meters if they are interfaced and intermembered with existing mailing equipment and there is only one authorized manufacturer's branch or qualified dealer representative providing services for a manufacturer in a specified geographical area. This exemption applies only in circumstances where annual postage meter rental services are less than $100,000 (B.2(I))
  + Departmental memberships in professional organizations, provided it is solely a membership and does not include the performance of any personal services. Note: Memberships for represented employees are governed by applicable collective bargaining agreements and memberships for nonrepresented employees are governed by CalHR rules; (See SCM 1, section 3.23.) (B.2(m))
  + The cost paid to a publication to place a solicitation advertisement, when advertisement is required by law, such as public works solicitation ads in a local newspaper and trade paper, or an A & E solicitation ad in a professional society publication. (See SCM I§§ 10.20, 11.05.) (B.2(o))

State Contracting Manual Volume F section 6.5.0 listed below:

* + - Emergency contracts.
    - Goods and services for which the state has entered into an LPA and which have been competitively bid or which have been determined to be required for essential services and which have been established by a methodology that assures the state of a reasonable price for the goods/services offered.

State Contracting Manual Volume F section 6.5.1 listed below:

* + - Proprietary subscriptions, proprietary publications, and/or technical manuals (manuals, law books, technical manuals, technical services related to publications, etc.) regardless of media format.
    - Maintenance agreements for equipment that is under documented warranty, or where there is only one authorized or qualified representative, or where there is only one distributor in the area for parts and services.

i. For purposes of the SB/DVBE first policy, this includes proprietary parts from the manufacturer.

* + - Contracts with business entities operating Community-Based Rehabilitation Programs (CRP), which meet the criteria established by Welfare and Institutions Code Section 19404. Note: Exception does not apply to contracts justified pursuant to GC section 19130(a)

State Contracting Manual Volume F section 6.6.0 and 6.6.1 for the acquisition of new proprietary software and existing proprietary software maintenance/upgrades renewals when competition does not exist including:

* New proprietary software
* Existing proprietary software maintenance/upgrades renewals

While the listed procurements are exempt from this policy, purchasers should act as SB and DVBE "advocates" by looking for opportunities to enhance both prime and subcontracting opportunities for SB, SB-PW, MB, and DVBEs. Purchasers should attempt to recruit, certify or use SB, SB-PW, MB, and DVBEs for procurements exempt from this policy and competitive bidding whenever possible as allowable by law and policy. When using leveraged procurement agreements (LPAs) purchasers may consider any SB/DVBE off ramp options.

# Questions/ Contacts

For additional information, please contact the department’s SB/DVBE Advocate at [OBASAdvocate@dgs.ca.gov](mailto:OBASAdvocate@dgs.ca.gov)

**Approvals** Approved by Contract Governance Council on April 10, 2019.

