

**Text of Proposed Regulations:**

In the following text, ~~strikethrough~~ indicates deleted text; underline will be added or amended text.

**CALIFORNIA CODE OF REGULATIONS**

TITLE 2. Administration

Division 2. Financial Operations

Chapter 3. Department of General Services

Subchapter 8. Office of Small Business Procurement and Contracts

**Article 1. General Provisions.**

**Section 1896.4 Definitions.**

~~(l) Discontinuance means an interruption in certification pursuant to section 1896.17 subdivision (b), remediable by restoration to the certified status in accordance with section 1896.17, subdivision (c).~~ Disadvantaged Business Enterprise (DBE) means a federally certified firm as defined in Title 49 Code of Federal Regulations (CFR) Subtitle A, Part 26, not to be confused with the California-certified Disabled Veteran Business Enterprise (DVBE) as defined in Military and Veterans Code Section 999.

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~~(qq)~~ Microbusiness (Micro) means:

(1) A small business as defined in Government Code section 14837, subdivision (d)(2), or

(2) A manufacturer, as defined in Government Code section 14837, subdivision (c), that, together with all affiliates, has twenty-five (25) or fewer employees.

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**Subsections 1896.4 (aa) will be adopted to read:**

(aa) Voluntary Self-Identification pursuant to Government Code Section 14840 and Public Contract Code Section 10111(f) means the option made available by the

department for applicants and certified firms to voluntarily identify that the business is at least 51 percent owned by, and whose management and daily operations are controlled by, one or more individuals who identify as any of the following: Black (a person having origins in any of the Black racial groups of Africa); Hispanic (a person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race); Native American (an American Indian, Eskimo, Aleut, or Native Hawaiian); Pacific-Asian (a person whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, or the United States Trust Territories of the Pacific including North Marianas); Asian-Indian (a person whose origins are from India, Pakistan, or Bangladesh); woman; LGBTQ.

As authorized by Government Code Section 14839(a)(9), voluntary information self-identifying that an applicant or certified firm holds a DBE certification or other non-state business certifications can be disclosed within the registration process and does not impact the Small Business and/or Disabled Veteran Business Enterprise certification requirements.

Note: Authority cited: Sections 14600, 14837 and 14843, Government Code. Reference: Sections 927, 927.2, 11000, 11502, 14615, 14837, 14838, 14839, 14839.1, 14840 and 14842.5, Government Code; Sections 999 and 999.5, Military and Veterans Code; Sections 4100, 4113 and 10115.10, Public Contracts Code; and Volume 2, Chapter 14, State Contracting Manual; Title 49, Code of Federal Regulations (CFR), Subtitle A, Part 26 and California Code, Public Contract Code; Public Contract Code 10111(f).

## **Article 2. Small Business Participation and Preferences.**

### **Section 1896.5 Small Business Participation Goals.**

For the purposes of Government Code section 14838(f), all state agencies shall implement internal procedures on how to regularly search for, identify, contact, and include in solicitations certified firms that either have not previously done business with or that are not regularly used by the awarding department and other state agencies, and how to document these actions in the procurement/contract files.

(a) State agencies shall establish an overall annual minimum goal of twenty-five percent (25%) procurement participation for small businesses, including microbusinesses, on the total awarded contracts for goods, information technology, services to the state, and in the construction of state facilities.

(b) In order to facilitate the participation of small businesses, including microbusinesses, and achieve the overall annual twenty-five percent (25%) small business participation goal on the total awarded contracts, state agencies may use strategies including but not limited to paragraphs (1) and (2):

(1) State agencies' executive directors, or their designees, at their discretion, may designate specific types of competitive solicitations above the threshold

amounts specified in Government Code Sections 14838.5 and 14838.7, but not to exceed, \$3,500,000.01, to be advertised among and awarded solely to small businesses including microbusinesses as defined in Section 1896.4. The designation shall be in writing, shall be based on findings, shall advance Government Code Section 14836(b) and shall be reviewed periodically. The following factors shall be considered when identifying and designating competitive solicitations for small businesses and microbusinesses:

(A). Three or more small businesses and/or microbusinesses in the certification database can perform the work or provide the products and/or services being purchased by the state.

(B). For public works, three or more small businesses, microbusinesses, and/or small businesses for the purpose of public works in the certification database, at least one of which shall be a small business or microbusiness, can perform the work or provide the products and/or services being purchased by the state.

(C). The contract would not normally be fulfilled by California Prison Industry Authority.

~~(a2)~~ In order to achieve the overall required twenty five (25%) small business participation goal on the total awarded contracts, d State agencies and departments may set contract-specific small business participation goal requirements. When setting contract-specific small business participation requirements goals, for each specific solicitation leading to a contract award, the highest ranking executive or designee of an awarding department shall establish an appropriate small business participation requirement.

(A) Determining factors for setting an appropriate level of small business participation, as either a prime contractor, subcontractor, or supplier, include but are not limited to:

~~(1i)~~ The elements of work reasonably support the specified level of small business participation.

~~(2ii)~~ A search of the OSDS certification database indicates sufficient small businesses to perform the work.

~~(3iii)~~ Small business prime contractors, subcontractors, or suppliers have performed elements of the work on similar contracts.

~~(4iv)~~ Bidders historically have achieved or have not achieved small business participation on similar contracts.

~~(cB)~~ The commitment to achieve the participation requirement is satisfied when the awarding department determines that the bidder is either:

- (4i) A small business who performs a Commercially Useful Function (CUF), as section 1896.15 requires, and meets or exceeds the participation requirement stated in the solicitation; or
- (2ii) A non-small business that uses one or more small businesses to perform a CUF and who meets or exceeds the participation requirement stated in the solicitation.

(dC) In a joint bid situation, the small business participation requirement is deemed to have been met if the joint bidders satisfy all of the following conditions:

- (4i) At least one partner is a small business; and
- (2ii) At least one small business partner is responsible for a clearly defined portion of the work. The work shall be identified as a task, as a percentage, and as a dollar amount of the overall bid.

(eD) The bidder's authorized representative shall include the following in the bid:

- (4i) The name of each small business proposed for use in the contract;
- (2ii) The dollar amount and percentage each small business shall perform in comparison to the total contract dollar amount; and
- (3iii) A description of the tasks each small business will perform.

(fE) Upon completion of an awarded contract with small business participation, the prime contractor shall report to the awarding department the percentage of small business participation achieved.

(c) In accordance with Government Code Section 14838.1, to encourage the participation of small business in the improvement of the state's infrastructure, as provided in the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58, effective January 1, 2023, each state agency awarding any new contracts over five hundred thousand dollars (\$500,000) that are financed, in whole or in part, with proceeds of the IIJA shall do all of the following:

- (1) Establish a 25 percent (25%) small business participation goal on each contract over five hundred thousand dollars (\$500,000) that is financed, in whole or in part, with the federal IIJA funds.
- (2) The agency small business advocate shall provide information to California small businesses regarding training and technical assistance that is available to assist them in identifying, understanding, and bidding on contracts or projects funded through the agency with the IIJA funding as described in subdivision (e) of the act.
- (3) State agencies shall report annually to the department statistics comparing the Small Business and microbusiness participation dollars to the total

award dollars for such contracts. State departments that did not meet the 25% participation goal for the last fiscal year shall submit an Improvement Plan (plan of action) to department by October 1 of each year.

**Note:** Authority cited: Sections 14836, 14837, 14838, 14838.1 and 14843, Government Code. References: Sections 14110.3, 14835, 14838, 14838.1, 14838.5, 14838.7, 14839, 14839.1 and, 14841, Government Code.

#### **Section 1896.6. Application of the Small Business and Non-Small Business Preferences.**

(a) A small business will be granted the five percent (5%) small business preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced, responsive bid or a bid that has been ranked as the highest-scored bid pursuant to a solicitation evaluation method described in section 1896.8, and when the small business does all of the following:

- (1) Has included in its bid a notification to the awarding department that it is a small business or that it has submitted to OSDS a complete application pursuant to section 1896.14, subdivision (a) no later than the end of the bid due date, and is subsequently certified by OSDS as a small business; and
- (2) Has submitted a timely, responsive bid; and
- (3) Is determined to be a responsible bidder.

(b) Non-small business bidders will be granted a five percent (5%) non-small business subcontracting preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in section 1896.8, and when the non-small business bidder:

- (1) Has included in its bid a notification to the awarding department that it commits to subcontract with at least twenty-five percent (25%) of its net bid price with one (1) or more small business; and
- (2) Has submitted a timely, responsive bid; and
- (3) Is determined to be a responsible bidder; and
- (4) Submits a list of the small business(es) it commits to subcontract with for a commercially useful function in the performance of the contract. The list of subcontractors shall include their name, address, phone number, small business certification number (if applicable), a description of the work to be performed, and the dollar amount or percentage per subcontractor as specified in the solicitation.

## **Section 1896.8. Computing the Small Business and the Non-Small Business Preferences.**

### **(a) Awards Made to the Lowest Responsive, Responsible Bidder**

(1) The five percent (5%) small business or non-small business subcontracting preferences are used for bid evaluation purposes when determining a contract award in the following situations:

(A) There is at least one (1) small business competing, and award of the contract will be made to the lowest responsive, responsible bidder. The preference shall be computed as follows:

4-(i). Five percent (5%) is computed from the lowest, responsive and responsible bid of a business that is not a small business. This results in the preference amount.

2(ii). The preference amount is subtracted from the small business' bid amount.

(B) There is at least one (1) non-small business competing that is subcontracting at least twenty-five percent (25%) of its net price bid to one (1) or more small businesses, and award of the contract will be made to the lowest responsive, responsible bidder. The preference shall be computed as follows:

4-(i). Five percent (5%) is computed from the lowest, responsive and responsible bid of a business that is not a small business, or is not subcontracting to a small business. This results in the preference amount.

2(ii). The preference amount is subtracted from the bid of the non-small business that is subcontracting at least twenty-five percent (25%) of its net price bid to one or more small businesses.

### **(b) Awards Based on Highest Scored Proposal**

(1) The five percent (5%) small business preference or non-small business subcontracting preferences are used for bid evaluation purposes when determining a contract award in the following situations:

(A) There is at least one (1) small business competing, and award of the contract is to be made to the highest-scored responsive bid submitted by a responsible bidder following an evaluation process that weighs factors other than price, together in a formula with price.

The preference shall be computed as follows:

4-(i). The awarding department shall specify the minimum number of points, if any, that a bid must receive in order to be deemed responsive and of acceptable quality. If a small business does not achieve the specified minimum number of points, it shall not be entitled to the five percent (5%) preference.

2(ii). Five percent (5%) of the score of the highest-scored responsive bid submitted by a responsible non-small business is computed as specified in the solicitation. The result of the calculation is a number that represents the preference points.

3(iii). The preference points are then included in the formula as specified in the solicitation to determine the highest-scored bidder.

(B) There is at least one (1) non-small business competing that is subcontracting at least twenty-five percent (25%) of its net price bid to one (1) or more small businesses, and award of the contract is to be made to the highest scored responsive bid submitted by a responsible bidder following an evaluation process that weighs factors other than price, together in a formula with price. The preference shall be computed as follows:

4(i). The awarding department shall specify the minimum number of points, if any, that a bid must receive in order to be deemed responsive and of acceptable quality. If a non-small business does not achieve the specified minimum number of points, it shall not be entitled to the five percent (5%) preference.

2(ii). If the non-small business achieves the specified minimum number of points, five percent (5%) of the score of the highest scored responsive bid submitted by a responsible non-small business that is not subcontracting a minimum of twenty-five percent (25%) of its net price bid to one (1) or more small businesses is computed as specified in the solicitation. The result of the calculation is a number that represents the preference points.

3(iii). The preference points are then included in the formula as specified in the solicitation to determine the highest-scored bidder.

(c) If, after application of the small business preference to the bid of a small business, that bid is equal to the lowest-priced, responsive bid from a responsible non-small business, or equal to the highest-scored bid offered by a responsible non-small business, as applicable, the contract shall be awarded to the small business for the amount of its bid.

(d) If, after application of the non-small business subcontracting preference, a responsible non-small business that has submitted a responsive bid is the lowest bidder, and does not displace a small business from winning the award, the contract shall be awarded to the non-small business for the amount of its bid.

(e) In no event shall the amount of the small business or non-small business subcontracting preferences awarded on a single bid exceed fifty thousand dollars (\$50,000), and in no event shall the combined cost of the small business or non-small business subcontracting preference and preferences awarded pursuant to any other provision of law exceed one hundred thousand dollars (\$100,000). In bids that the state has reserved the right to award by line item, or make multiple awards, the small business preference shall be applied to maximize the participation of small businesses.

(f) In the event of a precise tie between the bid of a small business and the bid of a DVBE that is also a small business, the award shall go to the DVBE that is also a small business.

(g) "Minimum requirements" as used in Government Code Section 14838(b)(3) refers to the minimum requirements of a responsive bidder in a specific solicitation and does not refer to any minimum small business participation requirement in a specific solicitation.



## Article 3 Heading: Small Business Eligibility, Certification Process and Responsibilities.

### Section 1896.12. Eligibility for Certification as a Small Business.

(a) To be eligible for certification as a small business, a business must meet all of the following qualifying criteria:

- (1) It is independently owned and operated; and
- (2) Its principal office is located in California; and
- (3) The officers of the business (in the case of a corporation); officers and/or managers, or in the absence of officers and/or managers, all members in the case of a limited liability company; partners in the case of a partnership; or the owner(s) in all other cases, are domiciled in California; and
- (4) It is not dominant in its field of operation(s), and
- (5) It is either:

(A) A business that, together with all affiliates, has 100 or fewer employees, and annual gross receipts (GARs) of eighteen ~~fifteen~~ million dollars (\$~~15~~18,000,000) or less as averaged for the previous three (3) tax years, ~~as biennially adjusted by the Department in accordance with Government Code section § 14837, subdivision (d)(3) (If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence)~~ If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR shall be based upon the number of years in existence. Refer to subdivision (j); or

(B) A manufacturer as defined herein that, together with all affiliates, has 100 or fewer employees.

(b) To be eligible for designation as a microbusiness, a business must meet all the qualifying criteria in subparagraph (a)(1) - (4), and in addition, must be either:

- (1) A business that, together with all affiliates, has annual gross receipts (GAR) of ~~six~~six million dollars (\$~~6~~6,000,000) or less as averaged for the previous three (3) tax years, ~~as biennially adjusted by the Department in accordance with Government Code section 14837, subdivision (d)(3) (If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence);~~ If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence. Refer to subdivision (j); or
- (2) A manufacturer as defined herein that, together with all affiliates, has 25 or fewer employees.

(c) Joint ventures may be certified as a small business or microbusiness when each individual business of the joint venture is a certified small business. The joint venture is established by written agreement to engage in and carry out a business venture for joint profit, for which purpose they combine their efforts, property, money, skills



and/or knowledge. The joint venture shall not be subject to the average annual gross receipts and employee limits imposed by this subchapter.

(d) Criteria for Certification Determination(s):

(1) In determining if a business is eligible for certification, OSDS ~~shall~~ may consider the applicant's organizational structure, operations and business relationships including any business affiliations during the previous three (3) tax years (or years the business has been in existence if fewer than three (3) tax years). OSDS may request the applicant provide copies of income tax returns as filed with the State of California or other jurisdictions in addition to the required federal income tax returns and schedules, as filed with the Internal Revenue Service, and/or other documentation deemed necessary for the OSDS to make a final certification determination.

(2) The OSDS may require the owner(s) or the certified firm to complete and submit an Internal Revenue Service Form 4506-T pursuant to Government Code section 14840, subdivision (b), for the purpose of requesting a tax return transcript for certification eligibility review.

(3) Government Code section 14837, subdivision (c) defines manufacturer for purposes of this subchapter. OSDS's determination of whether a business is a manufacturer may include the consideration of:

(A) Whether the business, with its own facilities, performs the primary activities in transforming inorganic or organic substances into the end item being acquired, and is not a packager or, in the case of kits, a final assembler. The end item must possess characteristics that did not exist, before the original substances, parts, or components were assembled or transformed, as a result of mechanical, chemical, or human action. The end item may be finished and ready for utilization or consumption, or it may be semi-finished as a raw material to be used in further manufacturing, and

(B) Whether more than fifty percent (50%) of its annual gross receipts, as determined by the Department, result from the manufacture and sale of products manufactured by the business.

(4) OSDS's determination of whether the officers, owners and/or partners, managers or members of a business, as applicable, are domiciled in California ~~shall~~ may be based on factors including, but not limited to, a review of:

(A) ~~Voter registration records;~~ The officers, owners and/or partners, managers, or members individual California Resident Income Tax Returns, filed as a resident of California; or

~~(B) Homeowner's property tax filings;~~ In cases where the officers, owners and/or partners, managers, or members, have not yet filed a California Resident Income Tax Return as a resident of California, a written statement, declared under penalty of perjury, that they intend to be

domiciled in California during the certification period and supporting documentation such as, but not limited to, a review of:

~~(C)~~ 1. Driver's licenses;

~~(D)~~ 2. Utility billings;

~~(E)~~ Individual state tax returns; and 3. Voter registration records; and

~~(F)~~ 4. Other documentation indicating presence in California is more than temporary or transient.

(5) OSDS's determination of whether the principal office of a small business is located in California, under the location requirements of Government Code section 14837, subdivision (d)(1), shall be based on factors including, but not limited to, a review of the address or physical location where management, direction, and control of operations originate.

(6) OSDS's determination of business affiliations, with respect to the requirements under Government Code section 14837, subdivision (d), shall be based on factors including, but not limited to, organizational structure, business operations, historical and current ownership, management, financial and/or business relationships or ties with another business, such as familial relationships, contractual relationships, assignments, passage of title to goods or merchandise, and other related matters as reflected in tax returns and other documentation.

(A) OSDS shall additionally consider the following factors in determining affiliation

1. The applicant business assigns a contract, in whole or in part, to another business;
2. There exists common ownership and/or management with the applicant business and another business;
3. The applicant business and another business share facilities, equipment, systems, or employees;
4. There is a familial relationship with the applicant business and another business and both businesses are in the a same similar industry;
5. A person or business has assisted the applicant business with activity to meet bond/security requirements.

(B) The following types of business relationships shall not be considered affiliations:

1. A franchise and/or license agreement provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership
2. A manufacturer's or service provider's representative provided that a written agreement exists between the manufacturer(s) or service provider(s) and the representative that substantiates the independent nature of the individual businesses.
3. A nonprofit public benefit corporation as described in section 1896.12, subdivision (h).

(C) A joint venture shall be deemed an affiliate for the purposes of this subchapter.

(7) A business entity whose ownership interests, management and operation are not subject to control, restriction, modification, or limitation by one or more individual(s) and/or business entities, other than those involved in the day-to-day operations of the business is considered independently owned and operated. OSDS shall presume an applicant business not to be independently owned and operated if evidence exists of any of the following:

- (A) One or more individual(s) and/or business entities not involved in the day-to-day operations, owns, or controls, or has the power to control, fifty percent (50%) or more of the voting stock of the applicant business, or
- (B) One or more individuals, or business owners, general partners, directors, officers, or members of another business entity not involved in the day-to-day operations, controls, or has the power to control, or influence the day-to-day operations of the applicant business, management and/or owner(s) of the applicant business.

(8) An applicant that exercises or has the ability to exercise a controlling or major influence, on a statewide basis, in a business activity or field of operation, may be determined to be dominant in its field of operation, and thereby statutorily ineligible for small business certification in accordance with Government Code section 14837, subdivision (d)(1). The following criteria, among others, may be considered by the OSDS in determining if the applicant business is dominant in its field of operation:

- (A) Volume of business;
- (B) Financial resources;
- (C) Competitive status or position;
- (D) Ownership or control of materials, processes, licenses agreements and facilities; and
- (E) Sales territory and nature of business activity.

(e) Except as limited by law, and only in order to determine the eligibility of a business for certification, OSDS may consider information provided to it from multiple sources, including but not limited to those seeking certification, information provided by another applicant, any previously submitted, provided, or collected documentation contained within the OSDS certification database, and records gathered or held by any California state or local agency, any governmental agency of another state, or the federal government.

(f) Small businesses are required to comply with all applicable statutory and regulatory requirements of any state or local agency, or the federal government, in order to be certified.

(g) To facilitate and promote a core statewide small business certification process, the Department shall provide local agencies and the general public web access to a small business statewide directory maintained by the OSDS for the purpose of searching and confirming small business certifications.

(h) Nonprofit veteran service agencies are eligible for certification as a small business if all of the conditions set forth in Military and Veterans Code section 999.51 are met. Nonprofit public benefit corporations are registered with the Department solely for the purpose of compliance with the provisions of the California Prompt Payment Act (Government Code §927 et seq.).

(i) Small business applicants must meet the applicant responsibilities as set forth in section 1896.14.

(j) The department, pursuant to Government Code Section 14837, subdivision (d)(3), shall conduct biennial reviews of the GAR standard and adjust it accordingly to reflect changes in the California Consumer Price Index as reported by the Department of Industrial Relations. The adjusted GAR shall be effective upon communication by the department.

Note: Authority cited: Sections 14837, 14839 and 14843, Government Code. Reference: Sections 927.2, 14615, 14837, 14838, 14839, 14839.1 and 14340, Government Code; Section 999.51, Military and Veterans Code; and Title 13, Code of Federal Regulations (CFR), Chapter I, § 121.406.

### **Section 1896.13. Eligibility for Certification as a Small Business for the Purpose of Public Works.**

To be eligible for certification as a small business for the purpose of public works, a business shall meet all of the qualifying criteria in subdivisions (a)(1)-(4) of section 1896.12, and in addition, shall be a business that, together with all affiliates, has two hundred (200) or fewer employees, and average annual gross receipts (GARs) of forty-three~~six~~ million dollars (\$436~~436~~,000,000) or less over the previous three (3) tax years. If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR shall be based upon the number of years in existence.~~as biennially adjusted in accordance with Government Code section 14837, subdivision (d)(3) (If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence).~~ Subdivisions (c), (d), (e), (f), (g), (i) and (j) of section 1896.12 ~~may~~ shall apply to certification eligibility as a Small Business for the purpose of public works.

NOTE: Authority cited: Sections 14600, 14837, 14839 and 14843, Government Code. Reference: Sections 927.2, 14615, 14837, 14838, 14839 and 14839.1, Government Code; and Section 999.51, Military and Veterans Code.

## **Article 3. Small Business Eligibility, Certification Process and Responsibilities.**

### **Section 1896.16 Certified Status.**

(a) A business meeting the eligibility and certification requirements set forth herein shall be certified as a small business, accorded all rights and privileges due pursuant to that certification, and included in the statewide directory of certified small businesses maintained by the OSDs.

(b) A certified small business meeting the microbusiness eligibility requirements is also designated a microbusiness. If the business exceeds the eligibility requirements for microbusiness designation at any time during the certification period, the microbusiness designation automatically ceases.

(c) It is the responsibility of the business to remain eligible for certification by maintaining all eligibility requirements throughout their certification period. A small business must promptly provide written notification to OSDS of any changes, including but not limited to, operation or ownership, and knowledge of changes that could affect a firm's continuing eligibility, e.g., exceeding the GAR limits and domicile, during its certification period. Should a small business be sold during its certification period, the certification ceases and certification is not transferable to new owners. New owners may seek certification in accordance with section 1896.14.

(d) Certification shall be issued for ~~thirty six~~ ~~twenty four~~ ~~(3624)~~ months. OSDS, in its discretion, may issue certifications of shorter durations, on a case-by-case basis, in accordance with the requirements referenced in section 1896.12. In addition, OSDS may extend the length of certification as long as the total period of certification, including sequential extensions, does not exceed sixty (60) months.

(e) Small businesses may apply for recertification in the manner set forth in section 1896.14, within ninety (90) days prior to expiration of an existing certification.

(1) Requests for recertification, electronic or paper, may not be submitted earlier than ninety (90) calendar days before the certification expires.

(2) Unless otherwise instructed by OSDS because OSDS already possesses the necessary updated information, the recertification request must contain updated information in order to demonstrate continued eligibility.

(f) Businesses shall receive electronic notification of certification status including length of certification. In addition, the directory database referenced in section 1896.12(e) will be updated.

(g) Certified small businesses are subject to verification of eligibility by OSDS at any time, upon written notice. A certified business must respond to OSDS' verification requests within 30 days from the date the notice is sent to certify that the business continues to meet all eligibility requirements. Additional time to respond shall be granted for good cause, which includes, but is not limited to, the certified business owner being out of the state, a medical issue preventing the certified business owner from responding in time, and needing to wait for another entity to provide the necessary documentation. If a certified small business is determined to no longer meet the eligibility requirements set forth in sections 1896.12 and 1896.13, certification is subject to discontinuance in accordance with section 1896.17, subdivision (b)(5).

(h) Requests to withdraw the certification shall be in writing.

(i) Small business(es) shall maintain all licenses, insurance coverage, permits, and registrations, including but not limited to those issued by any California state department and local government jurisdiction required for the conduct of business. Small businesses must notify OSDS and the awarding department of any changes in licenses, permits, registrations, operation, or ownership within thirty (30) calendar days upon such change.

NOTE: Authority cited: Sections 14837, 14839.1 and 14843, Government Code.  
Reference: Sections 14837 and 14839, Government Code.

## **CALIFORNIA CODE OF REGULATIONS**

### **TITLE 2. Administration**

#### **Division 2. Financial Operations**

#### **Chapter 3. Department of General Services**

#### **Subchapter 10.5 Disabled Veteran Business Enterprise Participation Goal Program for State Contracts**

### **Article 1. General Provisions.**

#### **Section 1896.81. Eligibility for DVBE Certification.**

(a) The DVBE applicant shall, pursuant to Military and Veterans Code sections 999 and 999.2, meet all of the following qualifying criteria:

- (1) DVs shall have at least a ten percent (10%) service-connected disability and be domiciled in California.
- (2) The principal office of the firm shall be located in the United States, and cannot be a branch or subsidiary of a foreign corporation, foreign firm, or other foreign-based business.
- (3) The business shall be at least fifty-one percent (51%) unconditionally owned by one or more DVs.
- (4) The daily business operations shall be managed and controlled by one or more DVs. The DV(s) managing and controlling the business is/(are) not required to be the same individuals as the DV business owner(s).
- (5) The DVBE shall have filed federal tax returns and submitted copies to OSDS in accordance with Military and Veterans Code section 999.2, subdivision (g).

(6) OSDS' determination of whether each qualifying disabled veteran is domiciled in California shall be based on, as applicable, a review of the following:

(A) The qualifying disabled veteran's California Resident Income Tax Returns, filed as a resident of California; or

(B) In cases where the qualifying disabled veteran has not yet filed California Resident Income Tax Returns as a resident of California, a written statement, declared under penalty of perjury, that they intend to be domiciled in California during the certification period, and supporting documentation such as, but not limited to:

1. Driver's licenses;
2. Utility billings;
3. Voter registration records; and
4. Other documentation indicating presence in California is more than temporary or transient.

(b) An entity meets the fifty-one percent (51%) unconditional ownership criteria under any of the following conditions:

(1) It is a sole proprietorship with at least fifty-one percent (51%) ownership by one or more DVs. The individual federal tax return submitted by the sole proprietorship shall demonstrate that the qualifying DV is the majority owner. There shall be no formal or informal restrictions that limit DV owner control.

(2) It is a partnership with at least fifty-one percent interest unconditionally owned by one or more DVs. The partnership agreement shall reflect each owner's interest. There shall be no formal or informal restrictions that limit DV owner control.

(3) It is a limited liability company (LLC) with a showing of one hundred percent (100%) unconditional ownership by one or more DVs pursuant to Public Contract Code section 10115.9. The operating agreement shall reflect each DV owner's interest as a member, manager and/or officer. There shall be no formal or informal restrictions that limit the DV owner control.

(4) It is a corporation with at least fifty-one percent (51%) unconditional ownership of all outstanding stock, including but not limited to voting stock owned by one or more DVs. DV owners shall control the board of directors. There shall be no formal or informal restrictions that limit voting power or control of DV owners.

(5) It is a subsidiary that is wholly owned by a parent corporation, but only if at least fifty-one percent (51%) of the voting stock of the parent corporation is unconditionally owned by one or more disabled veterans. If the subsidiary is an LLC that is wholly owned by a parent corporation, then one hundred percent (100%) of the voting stock of the parent corporation must be unconditionally owned by one or more DVs.

(6) Ownership by a living trust shall be equivalent to ownership by a DV, only if the trust reflects the DV owner(s) have at least fifty-one percent (51%) ownership and the DV owner(s) is/are the grantor(s) and/or trustee(s).

(7) DV ownership as documented in an employee stock ownership plan is allowable only if non-DV employee ownership under the plan does not exceed forty-nine percent (49%).

(8) Unconditional ownership by one or more DVs shall mean that ownership is not subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements of voting rights, or arrangements causing or potentially causing ownership benefits to go to another (other than after death or incapacity). The pledge or encumbrance of stock or other ownership interest as collateral, including seller-financed transactions, does not affect the unconditional nature of ownership if the terms follow normal commercial practices and the owner retains control absent violations of the terms. Unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by DVs are disregarded. However, any unexercised stock options or similar agreements, held by Non-DVs (including rights to convert non-voting stock or debentures into voting stock), will be treated as exercised.

(9) One or more DV owners must be entitled to receive:



- (A) Allocation or distribution of at least fifty-one percent (51%) of the entity's losses or profit; and
  - (B) The entire value of ownership shares.
  - (c) OSDS shall determine certification eligibility on the basis of the following management and control factors and conditions. DV owners and/or DV managers shall document that they maintain control of the business. Control includes both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations; and is composed of two parts -- Managerial and Operational.
- (1) DV owners shall have managerial control of the overall direction of the business, shaping its destiny. DV owners and/or DV managers shall demonstrate responsibility for the critical areas of the business's operations and be personally responsible for, including but not limited to, the following:
- (A) Negotiations, execution and signature of contracts; and
  - (B) Execution of financial (credit, banking, bonding) transactions and agreements.
- (2) To have operational control of the day-to-day operations, DV owners and/or DV managers shall demonstrate independent decisions for the day-to-day operations. Absentee or titular management by qualifying DVs is not considered operational control. DV owners and/or DV managers shall demonstrate an active role in controlling the business. Operational control is demonstrated by, including but not limited to, all of the following:
- (A) DV owners and/or DV managers possess the requisite experience, education, knowledge and qualifications in the business's field of operations;
  - (B) No third party agreements restrict control by DV owners and/or DV managers; and
  - (C) DV owners and/or DV managers control the operation of the business in the following areas:
    - 1. Supervision -- directly responsible for subordinates
    - 2. Work force -- directly responsible for subordinates, contractors or subcontractors
    - 3. Equipment
    - 4. Materials
    - 5. Facilities (office/yard)
- (3) A DV or DVs controlling the business shall:
- (A) Show sustained and significant time invested in the business. A DV engaged or employed with any other business(es) or governmental entity(ies), in any capacity, shall submit a detailed statement with the request for certification, explaining why such activities, duties or responsibilities do not impair the DV's ability to manage and control the certified business enterprise.
  - (B) Hold the highest officer position exercising control over all other positions in the business.
    - (1) The highest position in the business must be listed as such on any California Contractors State License when the license is held under the name of the DV or DV's business.

- (C) DV's unexercised right to cause a change in the management of the business does not in itself constitute DV control, regardless of how quickly or easily the right could be exercised. An exception is where DV(s) control of the board of directors, as demonstrated by the bylaws or articles of incorporation.
- (4) In the case of a partnership, one or more DVs shall serve as general partners, with control over all partnership decisions. A partnership in which no DV is a general partner will be ineligible for certification.
- (5) In the case of LLCs, one or more DVs shall serve as managing members, with control over all decisions of the LLC.
- (6) In the case of a corporation, one or more DVs shall control the board of directors.
- (A) DV(s) control the board of directors when, but not limited to:
1. DV(s) own(s) one hundred percent (100%) of all voting stock of the business; or
  2. DV(s) own(s) at least fifty-one percent (51%) of all voting stock of a business, one or more DV(s) is/are on the board of directors, and no supermajority voting requirements exist for shareholders to approve corporate actions; or
  3. One or more DVs own at least fifty-one percent (51%) of all voting stock, each DV owner is on the board of directors, and no supermajority voting requirements exist for shareholders to approve corporate actions. DV shareholders shall demonstrate that together or combined they possess the ability to control the business.
- (B) Where a business does not meet the requirements set forth in subdivision (6)(A), the corporate by-laws shall specify that the DVs upon whom eligibility is based shall control the board of directors. In a two-person board of directors, with one individual a DV and the other a non-DV, certification eligibility requires the DV's vote to be decisive.
- (C) Provisions for the establishment of a quorum cannot permit Non-DV directors to directly or indirectly control the board of directors.
- (7) Non-DVs involved in the management of the DVBE or as minority stockholders, partners, officers, or directors, shall not exercise overall organizational control or dominance, or power to control the business.
- (8) Non-DVs who transfer majority stock ownership of the business to DVs within two years, prior to the submission of a request for certification, and remain involved in the business, in any capacity, are presumed to control the business. This presumption may be rebutted by documenting that DV majority stockholders meet all management and control requirements and have the experience necessary to manage and control all activities of the business. The rebuttal shall be submitted by DV stockholder(s).
- (9) Non-DVs or entities may be found to control or have the power to control in the following situations, including but not limited to:
- (A) When the by-laws allow Non-DVs through a quorum to block DVs proposals.
- (B) When a Non-DV provides the licenses, critical financial or bonding support upon which the business is operationally dependent.

(C) When the terms of a loan agreement give the grantor the power to control the business.

(D) When dependency relationships with Non-DVs or entities are such that DVs cannot exercise independent business judgment due to the assumption of economic risk by others.

(E) When Non-DVs receive, as directors, officers or employees, compensation from the business that exceeds the compensation received by DVs holding the highest officer position, unless exceptions apply for legitimate employee retention purposes or income deferral reasons.

(d) For purposes of this subchapter, OSD's determination of whether certified DVBEs with a small business or small business with microbusiness designation are manufacturers shall, consistent with the section 1896.12, subdivision (d)(3) of Title 2, California Code of Regulations (CCR) criteria for small business, include consideration of the following:

(1) Whether the business, with its own facilities performs the primary activities in transforming inorganic or organic substances into the end item being acquired, and is not a packager, or, in the case of kits, a final assembler. The end item must possess characteristics that did not exist before the original substances, parts, or components were assembled or transformed, as a result of mechanical, chemical, or human action. The end item may be finished and ready for utilization or consumption, or it may be semi-finished as a raw material to be used in further manufacturing, and

(2) Whether more than fifty percent (50%) of its annual gross receipts, as determined by the Department, result from the manufacture and sale of products manufactured by the business.

(e) DVBEs are required to comply with all applicable statutory and regulatory requirements of any state or local agency, or the federal government, in order to be certified.

(f) DVBE applicants must meet the applicant responsibilities as set forth in section 1896.82.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 999 and 999.2, Military and Veterans Code, Section 23101, Revenue and Taxation Code; Sections 10115.1 and 10115.9, Public Contract Code; Title 38, United States Code, § 1114; and Title 13, Code of Federal Regulations (CFR), Chapter I, § 121.406.

### **Section 1896.84 Certified Status.**

(a) Certified status is granted to those business entities who have met and complied with sections 1896.80, 1896.81, and 1896.82 requirements.

(b) Qualified DVBEs are issued the following certifications:

(1) DVBE certification, valid for ~~thirty six~~ ~~twenty four~~ (36)24 months.

(2) Multiple certifications, valid for ~~thirty six~~ ~~twenty four~~ (36)24 months. Multiple certifications mean DVBEs also have small business and small business for the

purpose of public works certifications. Refer to sections 1896.4, subdivision (u) and 1896.4, subdivision (v) of Title 2, California Code of Regulations (CCR), for the definition of a small business and small business for the purpose of public works designations.

(3) Multiple certifications, with microbusiness and small business for the purpose of public works designations, valid for ~~thirty six~~ thirty six ~~twenty-four~~ (36) months. Refer to section 1896.4, subdivision (p) of Title 2, California Code of Regulations (CCR), for the definition of a microbusiness designation.

(4) OSDS, at its discretion, may issue short-term certifications, for up to ~~thirty six~~ thirty six ~~twenty-four~~ (36) months on a case-by-case basis based on the requirements set forth in section 1896.81. In addition, OSDS may extend the length of certifications as long as the total period of certification, including sequential extensions, is not exceeding sixty (60) months.

(c) The business shall be electronically notified of its certification, length of certification, and inclusion in the certification database.

(d) Recertification must be applied for, in the manner set forth in section 1896.80, prior to expiration of an existing certification.

(1) Requests for recertification, either electronically or on paper, may not be submitted earlier than ninety (90) calendar days before certifications expire.

(2) Unless otherwise instructed by OSDS, recertification requests must contain updated information and/or replacement of obsolete content to demonstrate continued eligibility.

(3) The qualifying DV shall declare in writing there are no changes in the service-connected disability as previously documented or, if there have been changes, provide the verification referenced in section 1896.82, subdivision (b).

(e) DVBES are subject to verification of eligibility by OSDS at any time. Whenever eligibility requirements are no longer met, DVBES shall withdraw in writing from certification or OSDS will discontinue certification thirty (30) days after written notice.

(f) In order to maintain certification when there are changes in ownership or business structure the following shall be required:

(1) DVBES shall submit a new certification request identifying the new DV owners, DV managers and new business structure. Continued eligibility and the award of any new contracts require that OSDS first verify that all eligibility requirements are met by the business and the new owners; and

(2) Similarly, any exchange of a DV owner with another DV owner while in the course of contract performance must be approved by the awarding department and OSDS prior to such change.

(g) In the event of a certification of permanent medical disability or death of qualifying DV owners, the business shall do the following:

(1) Notify OSDS and awarding departments as soon as possible, not exceeding thirty (30) calendar days following the occurrence of permanent disability or death.

(2) Submit a new certification request to OSDS in accordance with section 1896.80 within ninety (90) calendar days following the occurrence of permanent disability or death.

(3) Submit documentation certifying the DV's permanent medical disability or death to OSDS along with the certification request. In addition, provide documents verifying who controls or has inherited the business. If permanent medical disability or death is confirmed, DVBE certification may continue, or recertification may be granted, for a period not to exceed three (3) years after the certified date of permanent medical disability, or death, if the business is inherited or controlled by the spouse or child of the majority owner, or by both of those persons.

(4) Such businesses are deemed to continue as a DVBE pursuant to Military and Veterans Code section 999, subdivision (b)(7)(B) solely for the purposes of the following:

(A) Fulfilling the requirements of an existing contract, entered into prior to the DV's death or certification of permanent medical disability, if the business is inherited or controlled by the spouse or child of the majority owner, or by both of those persons, for the duration of said contract, or,

(B) Providing sufficient time to make orderly and equitable arrangements for the disposition of the business, provided that the business shall not enter into any new contract as a DVBE, if the contract cannot be completed within the allowable three (3) year period.

(h) DVBEs shall maintain all licenses, insurance coverage, permits and registrations, including but not limited, to those issued by any California state department or local government jurisdiction required for the conduct of business. OSDS and the awarding department shall be noticed of any changes in licenses, permits, registrations, operation or ownership within thirty (30) calendar days.

(i) DVBEs must promptly notify OSDS in writing upon any change in the business address, contact information, or the DVs home address that may occur subsequent to obtaining certification.

(j) DVBEs shall maintain active status with the California Secretary of State and Contractors State License Board, when legally required to do so.

(k) DVBEs shall notify OSDS and the awarding department, in accordance with the provisions in Military and Veterans Code section 999.2, subdivision (h), if the requirements for certification have not been maintained.

NOTE: Authority cited: Sections 14600 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 14615.1, 14837 and 14838, Government Code; and Section 999, Military and Veterans Code.