ADDENDUM TO INITIAL STATEMENT OF REASONS

AB 2019 2974 SB/DVBE Proposed Regulations

I. Purpose

Following publication of the Notice of Proposed Rulemaking on August 15, 2025, the Department of General Services (DGS) has made limited modifications to the proposed regulations, and it has added to this addendum language intended to clarify the purpose and necessity of the proposed regulations stated in the Initial Statement of Reasons. The modifications to the proposed regulations are sufficiently related to the original text and are intended to improve clarity and consistency of the regulations. These modifications and clarifying language are intended to resolve issues identified during OAL review.

II. Modifications to Proposed Regulations

A. California Code of Regulations, Title 2, Section 1896.5(b)(1)

i. Description

OSDS changed language in California Code of Regulations, Title 2, Section 1896.5(b)(1). Removed text is indicated in double strikethrough and added text is indicated in red, double underlined text below:

(1) State agencies' executive directors, or their designees, when evaluating contracting needs ~~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, in the amount between $250,000 and $3,500,000.01,~~ to be advertised among and awarded solely to small businesses and~~including~~ microbusinesses as defined in Section 1896.4, provided the contract value is between $250,000 and $3,500,000. The designation shall be in writing and shall document the agency's goal of ensuring participation by small businesses pursuant to Government Code section 14836(b)~~, shall be based on findings, and shall advance Government Code Section 14836(b) and shall be reviewed periodically~~. The following factors shall be met when~~considered when identifying and~~ designating competitive solicitations for small businesses and microbusinesses:

(C). The contract would not normally be fulfilled by California Prison Industry Authority pursuant to State Contracting Manual section 502 and Penal Code section 2807.

ii. **Purpose**

The purpose of these changes is to clarify requirements on the contracting authority and responsibilities of state agencies when and if they elect to use this designation in meeting and/or exceeding their mandated participation goals. These changes do not specify the procurement processes and procedures departments must use to implement this Section. Similar to other state processes involving written justifications, the SB contract designation would be open to the public and business community to show the justification and reasonableness of the designations, much like multitude of business or program decisions state departments make on a regular basis that are subject to the public scrutiny. The departments are not required to make *any* designation; this is one of the tools available to them to use to meet their mandates, and when they do elect to make designations, they will inevitably determine the contract processes and procedures needed to implement this designation, including timing, duration, cost of the contracts, etc.

iii. **Necessity**

These changes are necessary to prevent confusion, undue hardship, and unnecessary expenses for state agencies when performing contracting activities. If the identified language is not removed, DGS will be required to overprescribe and unnecessarily make complex language to the regulations regarding contract evaluation and enforcement mechanisms that burden the state with unnecessary expenses and resource requirements.

iv. **Authority**

DGS authority to develop new programs that are reasonable necessary to aid and protect the interest of SB/DVBE is layered based on the following statutory provisions:

- As the centralized agency for business management for the state, DGS has extensive regulatory and oversight authority over procurement of goods, information technology, and services. (Government Code, §§ 14600, 14615; PCC §§ 10290-10490, 12100-12113.)
- In addition, Government Code section 14839 subdivision (a) (7) mandates that DGS OSDS discharge its duties by "developing, by regulation, other programs and practices that are reasonably necessary to aid and protect the interest of small businesses, microbusinesses, and disabled veteran business enterprises…."

- The Legislature has declared that “it is essential that opportunity is provided for full participation in our free enterprise system by small business enterprises,” and that “the state economy is strengthened by the diversity and resiliency of its small businesses and that it is essential to ensure all small businesses are able to fully participate in the domestic and global markets….” In 2022, the Legislature increased the responsibility for state agencies to expand small business contracting opportunities by changing the requirement for DGS and the heads of other state agencies to establish goals for the participation of small businesses and microbusinesses in state contracts to requiring state agencies to establish a minimum goal of 25% procurement participation for small businesses, including microbusinesses. (Government Code, § 14838, Bill Text: CA AB2019 | 2021-2022 | Regular Session | Chaptered | LegiScan.)

To assist state departments to achieve the 25% small business and microbusiness goal, DGS OSDS proposes to amend the existing regulation to allow state agency executive directors or their designees to designate specific types of competitive solicitations above $250,000 and up to $3,500,000 to be advertised and awarded solely to small businesses and microbusinesses. The proposed regulation is to make specific the Legislation, and to provide tools for the departments to achieve the small business and microbusiness goal. The regulation is constitutional because, for general economic regulations (small business and microbusiness – not suspect or quasi-suspect classes), the state only has to demonstrate that it is rationally related to achieve a legitimate government interest. As demonstrated in the ISOR, the proposed regulation gives small business and microbusiness advantages in certain state contracting, without having to compete with big businesses, which would assist the state in achieving the 25% small business and microbusiness participation goal. It should be noted that the regulation does not mandate the use of the tool, but gives the departments discretion to use the tool when they deem appropriate to achieve the 25% goal established by the Legislature.

Designating competitive solicitations to be advertised and awarded solely to certified Small Businesses (SBs) and Small Business (Micros) supports legislative mandates provided in AB 1574 to continuously make efforts to expand the pool of SB and Micro bidders, and creates increased opportunities for more businesses to engage and compete for contracts. This can support increased small business growth, job creation, and overall economic impact in their communities. Allowing departments to advertise, solicit and award contracts within the specified range to only certified SBs, Micros, and Small Business for the purpose of Public Works (for public works contracts) better facilitates this because $250,000 to $3,500,000 is the contract range where the majority of SBs and Micros are conducting, or have the potential to conduct, most of their business with the state.

The proposed regulation is authorized by Government Code 14843 which allows DGS to make all rules and regulations consistent with the law for the purpose of carrying into effect Chapter 6.5 Small Business Procurement and Contract Act. This authority does not override the state's general contracting principles and statutes. The process still calls for fair and competitive (not open) bidding and full competition (per PCC 100) since state agencies designate contracts to the bidding pool of small businesses. Within this bidding pool, any SB can compete and the contract is still won through standard, fair competitive bidding. The bidding follows the competition laws because it uses a fair, public, and competitive process per PCC 100 and SCM Chapter 1-100 (Purchasing Authority) and Chapter 12 -1200 (SB and DVBE Contracting).

Designating contracts to the SB bidding pool is reasonably related to achieving the legislative goal as previously stated based on the following:

- To aid and protect the interest of small business to the maximum extent possible to ensure free competitive enterprise compliant with the state policy declaration in the Government Code 14835 (the Small Business Contracting and Procurement Act) that the state should "aid, counsel, assist, and protect, to the maximum extent possible, the interests of small business concerns, including microbusinesses, in order to preserve free competitive enterprise and to ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the state."

- To support state agencies in meeting their participation goals and ensuring a fair portion of their contracting dollars go to small businesses. AB 2019 effective 2023 made the 25% SB goal a mandate for state departments in Government Code 14838, and amended Government Code 14843 to require DGS to apply remedial actions which include removing purchasing authority and imposing contracting restrictions to state departments not meeting their SB goals for there out of 5 years.

> Such drastic measures would require us to give departments clear, meaningful, effective, and vigorous rules such as these proposed regulations before imposing the ultimate sanction of taking their contracting authority away.

For the past three years, an average of 44 (28%) departments did not meet the SB goal annually. In the first 3-out-of-5-year cohort, there were 23 departments subject to remedial actions. The second cohort comprises another 23 new departments. Providing state departments with discretion in deciding to use this designation as a tool in meeting their mandates in the best interest of the state, ensuring SB contractors' availability and providing all qualified bidders with a fair opportunity to enter the bidding process in a manner conducive to sound fiscal practices, complies with PCC 100 regarding state competitive bidding and SCM 1-100 regarding purchasing authority delegation.

B. California Code of Regulations, Title 2, Section 1896.5(c)(2)

i. Description

OSDS added language to California Code of Regulations, Title 2, Section 1896.5(c)(2) which is indicated in red, double underlined text below:

> The agency small business advocate acting as liaison in accordance with Government Code Section 14838.1 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.

ii. Purpose

The purpose of adding "acting as liaison in accordance with Government Code Section 14838.1" is to clarify the role and authority of small business advocates. Government Code Section 14838.1 refers to the agency small business liaison as designated pursuant to Government Code Section 14846. Government Code Section 14846 designates the small business advocate as a liaison. State agencies use the title "small business advocate", not "small business liaison" for the responsibilities established by Government Code Sections 14838.1 and 14846.

iii. Necessity

It is necessary to clarify the role and responsibilities of the small business advocate with this change since utilizing only the term “liaison” will create confusion as to the role and responsibilities of the small business advocate created by Government Code Section 14838.1.

C. California Code of Regulations, Title 2, Section 1896.12(j)

i. Description

OSDS changed the language to California Code of Regulations, Title 2, Section 1896.5(c)(2). Removed text is indicated in double strikethrough and added text is indicated in red, double underlined text below:

> (j) ~~The department,~~ ~~p~~Pursuant to Government Code Section 14837~~,~~ ~~subdivision~~ (d)(3), the department shall conduct a biennial review~~s~~ of the GAR ~~standard~~ levels and adjust ~~it~~ them ~~accordingly to reflect changes in~~ pursuant to the average annual inflation rate in California as reflected by the California Consumer Price Index (CCPI) for all items as reported by the Department of Industrial Relations in October of the year of review. ~~The adjusted GAR shall be effective upon communication by the department.~~ In the event a CCPI for all items is not published by DIR in October in the year of biennial review, the department shall utilize the most recent prior CCPI for all items issued immediately before October of the year of biennial review. The adjusted GAR levels shall become effective on April 1 of the next year after the year of review, and the adjusted GAR levels and their date of implementation shall be emailed to certified California small businesses and posted on the OSDS website no later than that date.

ii. Purpose

The purpose of these changes is to clarify the method by which GAR standards are adjusted and to remove conflict with existing Government Code that determines when changes in GAR standards become effective.

iii. Necessity

These changes are necessary to better inform the public on how changes in GAR standards are determined and when changes in GAR standards become effective, and to prevent DGS from violating existing law.

III. Clarifying Language

A. Justification for Duplication

i. California Code of Regulations, Title 2, Section 1896.4(aa)

It is necessary to add language in California Code of Regulations, Title 2, Section 1896.4(aa) that duplicates language in Government Code Section 14840 to help small businesses, state agencies, and DGS staff better access, understand, and implement the requirements in Government Code Section 14840. This necessity is based on a long history of hearing complaints from small and disabled veteran owned businesses that information is scattered, it is difficult to navigate between regulations and law, and most business owners do not know the distinction between regulations and law. In addition, there are instances when state employees have difficulties in determining when to cite law and when to cite regulations in official and legal correspondence.

ii. **California Code of Regulations, Title 2, Section 1896.5(c)**

It is necessary to add language in California Code of Regulations, Title 2, Section 1896.5(c) that duplicates language in Government Code Section 14838.1 to help small businesses, state agencies, and DGS staff better access, understand, and implement the requirements in Government Code Section 14838.1. This necessity is based on a long history of hearing complaints from small and disabled veteran owned businesses that information is scattered, it is difficult to navigate between regulations and law, and most business owners do not know the distinction between regulations and law. In addition, there are instances when state employees have difficulties in determining when to cite law and when to cite regulations in official and legal correspondence.

B. California Code of Regulations, Title 2, Section 1896.5

i. **Section 1896.5(a)**

Stating "including microbusinesses" is necessary because this is a designation that gets counted and reported separately per PCC 10111. For clarity purposes, it needs to be mentioned, otherwise departments may eliminate them from considerations.

ii. **Data Source for Contract Designation under Section 1896.5(b)(1)**

The $250,000 to $3,500,000 proposed designation range is derived from an analysis of data for 2020, 2021, and 2022 in the State Contract & Procurement Registration System (SCPRS) that shows that $250,000 to $3,500,000 is the contract range where the majority of SBs and Micros are conducting, or have the potential to conduct, most of their business with the state.

iii. **Section 1896.5(b)(1)(A) and (B)**

Section 1896.5(b)(1)(A) and (B) are necessary to provide clarity to departments when identifying and designating competitive solicitations under this Section.