

INITIAL STATEMENT OF REASONS (ISOR) ADDENDUM

This is an addition to the ISOR as originally proposed for rule adoption, amendment and/or repeal.

Subsection 1896.4(l) text was unintentionally struck out. The text has been reinserted to include the definition of Employee in subsection 1896.4(m).

Subsection 1896.4(p) for clarity purposes, text was deleted, added and reinserted, citations to statute and regulation were corrected to explain eligibility requirements and when the microbusiness designation is achieved. Also, text was unintentionally struck out. The text has been reinserted to include the definition of Net bid price in subsection 1896.4(q).

Subsection 1896.4(t) text deleted and inserted to correct the term responsive bidder to responsible bidder and to correct the reference to the State Contracting Manual.

Subsection 1896.4(w) text added to correct the reference to solicitation in the State Contracting Manual.

Subsection 1896.4(x) text was unintentionally struck out. The text has been reinserted to include the definition of Tax return in subsection 1896.4(y).

Section 1896.5 for clarity, text from the first three paragraphs rearranged to better convey that departments need to create internal procedures to comply with the law set forth in Assembly Bill 1574 and to make sure internal procedures are followed when documenting their actions within procurement files.

Section 1896.12 for clarity, the added “S” to GAR has been deleted to not give the impression another word was added to gross annual receipts; added the word “shall” to the determining factors of principal office and affiliation to make it clear what will be used in OSDS’ decision-making process in order for a business to meet eligibility criteria. Also, minor corrections including unintentionally left out letters have been added.

Section 1896.13 for clarity, the added “S” to GAR has been deleted to not give the impression another word was added to gross annual receipts.

Section 1896.14 for clarity and necessity, the form number DGS PD 812 was added along with the revised certification application name, date and website address link incorporated by reference; the added “S” to GAR has been deleted to not give the impression another word was added to gross annual receipts; and “i.e.,” replaced by “e.g.,” to demonstrate how changes in the business can affect two eligibility requirements, GAR and domicile.

Section 1896.14(e) for clarity, text is adopted to require that a request to withdraw an application must be in writing. This is necessary so that OSDS can create a record of the request for easier tracking in case of an audit or to fulfill a confirmation of withdrawal request from the firm.

Subsection 1896.15(d) for clarity and consistency, text added to correct the reference to the State Contracting Manual directing contracting officials to monitor CUF compliance throughout the contract term and certify the work performed by certified firms is CUF compliant. Additional grammatical corrections made.

Section 1896.16 for clarity and consistency, added and deleted text for grammatical corrections- i.e., versus e.g.; the added "S" to GAR has been deleted to not give the impression another word was added to gross annual receipts; OSDS will instruct firms to provide any additional new documentation needed when reverifying their certification eligibility so as not to cause undue hardship on the firm needed to supply the documentation; specified that a certified business must respond a notice from OSDS to validate eligibility requirements by the date and time written in the notice to allow flexibility for the firm to negotiate a reasonable timeframe in case the original date and time cannot be met based on the examples of good cause; and included the requirement for firms to have the ability to request withdrawals of submitted applications in writing and not by phone, so that OSDS can create a record of the request for easier tracking in case of an audit or to fulfill a confirmation of withdrawal request from the firm.

Section 1896.17 for clarity and consistency, text added, deleted, rearranged, and repositioned, grammatical corrections, unintentionally left of wording, as well as a correction to the cited statute for DVBE suspensions

- Subsection (a) cross reference to Military and Veterans Code updated and grammatical corrections.
- Subsection (c) title updated for grammatical accuracy to Restoration After Discontinuance.
- Subsection (e) rewritten for clarity to explain if a business is certified based on the submittal of incorrect, incomplete information and knew or should have known the information was not accurate or purposely withheld and as a result was awarded a contract based on that same fraudulent documentation will be subjected to Gov. Code section 14842.
- Subsection (g) is repositioned to section 1896.20 not section 1896.18 as originally stated in the ISOR.

Section 1896.18 for clarity and consistency, text added, deleted and rearranged for grammatical accuracy and to simplify the enforcement actions OSDS is responsible for taking when a firm is in violation of program rules.

Section 1896.20 for clarity and consistency, text added to correct cited statutes and change the word subsection to section to ensure that these rules apply to the entire section along with grammatical corrections.

Section 1896.22 for clarity and consistency, text added and deleted, updated reference to regulatory section and citations, the word “subchapter” is corrected to “subdivision”, and corrected grammatical errors added text that was unintentionally left out and deleted.

Section 1896.26 for clarity and consistency, text previously added to the original ISOR regarding the effective date of the ALJ’s decision was deleted.

Section 1896.60 for clarity and consistency, updated and corrected grammatical errors in reference note section.

Section 1896.62 for consistency, corrected grammatical errors.

Section 1896.70 for consistency, corrected grammatical errors and double underlined previously added text.

Subsection 1896.71(d) for clarity and consistency, text deleted and added to correct the reference to the State Contracting Manual directing contracting officials to monitor CUF compliance throughout the contract term and certify the work performed by certified firms is CUF complaint. Additional grammatical corrections made.

Subsection 1896.73(i) for clarity and consistency, text added and deleted to correct cited statute, grammatical corrections and numerical sequencing in the reference notes.

Section 1896.77 for clarity and consistency, “shall” replaced “will” to instruct procurement officials of the contractor’s obligation to provide proof when requested showing all DVBE subcontractor commitments have been met. Additional corrections to punctuation.

Section 1896.78 for clarity and consistency, text was added and deleted, the version date 10/2021 was added to the Prime Contractor’s Certification – DVBE Subcontractor Report (STD 817) incorporated by reference; “cure the defect” was added to replace “comply with the requirement” along with additional wording to closely align with Military and Veterans Code Sections 999.5 and 999.7; and corrections to grammatical errors and citations. Additionally in the original ISOR, DGS described the adoption of a subsection (i), but no such subsection is being adopted.

Section 1896.80 for clarity and necessity, the form number DGS PD 812 was added along with the revised certification application name, date and website address link incorporated by reference and corrections to grammatical errors.

Section 1896.81 for clarity and consistency, text added, deleted and reinserted text unintentionally left out, grammatical corrections were made; reinserted the text “an exception is where” and removed “this right is included in the” as the new wording caused confusion and did not clarify that the exception is still available.

Section 1896.82 for clarity, text was added, deleted and grammatical corrections were made.

Section 1896.83 for clarity and consistency with section 1896.12, removing the word “California” to allow greater flexibility in the documentation that can be provided by firms for certification review.

Subsection 1896.84 for clarity and consistency, text deleted and added for grammatical corrections and to state applications for recertification must be provided either electronically or in paper format.

Section 1896.85 for clarity and consistency with section 1896.17, in the title the word “of” was removed and “after” was inserted due to the restoration of certification will occur after discontinuance and grammatical corrections were made.

Section 1896.90 for clarity, grammatical corrections were made.

Section 1896.91 for clarity, grammatical corrections were made.

Section 1896.92 for clarity, corrections made to grammatical errors and cited statutes.

Section 1896.95 for clarity, grammatical corrections were made.

Section 1896.97 for clarity and consistency, text previously added to the original ISOR regarding the effective date of the ALJ’s decision was deleted.

Request for Small Business, Small Business for the Purpose of Public Works and/or Disabled Veteran Business Enterprise Certification (Application) DGS PD 812 (Rev. 09/2019)

Old Question 28b: An applicant, if the applicant firm is a sole proprietorship, no longer needs to answer whether the business owner or the owner’s spouse has other sole proprietorships during any one (or all) of the three previous tax years. This requirement is no longer necessary because OSDS has access to this information on the applicant’s tax returns.

Old Question 41/New Question 44: The application used to ask whether the DV owner and/or DV manager engaged in at least 30 hours of work per week outside of the business. The 30-hour qualification is deleted. This change is necessary because OSDS shall determine certification eligibility on the basis of management and control factors not on a specific number of hours the disabled veteran owner or manager is engaged or employed with another business.

New Question 48: An applicant is now permitted to provide corporate bylaws to identify all corporate officers. The change is necessary because the corporate bylaws will list the corporate officers and their ownership percentages, so it is not necessary for the applicant to list the corporate officers as a separate requirement.

Support Documents by Certification Type – SB and/or SB-PW Certification Support Document Requirements:

- An applicant is now required to submit a written expedite request and a completed application package at least five working days prior to the bid due date. This change is necessary to afford OSDS ample time to review the application.
- The Affidavit of Income form is officially attached to the application. This is necessary to afford applicants with an alternative way to provide gross receipt information when the applicant's federal income tax return is not available.
- For SB and/or SB-PW Joint Ventures, the regulations now specify that each joint venture partner must be certified as a SB. This change is necessary to remind applicants that the SB eligibility requirements for the GAR and employee count limits also apply to these joint ventures.

DVBE Certification Support Document Requirements:

- The Affidavit of Income form is officially attached to the application. This is necessary to afford applicants with an alternative way to provide gross receipt information when the applicant's federal income tax return is not available.
- A required letter from the U.S. Department of Veterans Affairs must be dated within one year of OSDS receiving the application. This requirement was previously within six months. This change is necessary to allow ample time for businesses to gather and submit required documentation for OSDS certification review.
- For DVBE Joint Ventures, the regulations now specify that at least one co-venturer must be certified as a DVBE. This change is necessary to remind DVBE applicants that the joint venture must be managed and controlled by a DVBE.

Additional Support Documents that May Be Requested by OSDS: Two changes were made regarding the list of documents pertaining to business ownership not required to be sent unless requested by OSDS. First, a partnership agreement was added. This change is necessary because a partnership agreement is only requested when the management and ownership of a small business is at question and has not been previously provided for eligibility review. Second, the exception that a disregarded entity will not be required to provide individual federal income tax returns was added. This change is necessary because OSDS will need the business owner's individual personal tax return to establish if the applicant (single owner limited liability company) met the certification eligibility criteria.

Prime Contractor's Certification – DVBE Subcontractor Report STD 817, Formerly DGS PD 810P (Rev. 10/2021)

The first portion of the Certification requires that the Prime Contractor provide the following state department, contract information and prime contractor information:

- The following State Department Information is required: State Department Name, State Department Address, Contract Manager Name, Contract Manager Phone Number and Contract Manager Email Address. This information is necessary for the prime contractor to know which department the awarded contract was from.
- The following Contract Information is required: Contract Number, FI\$Cal Supplier ID Number, Contract Execution Date, Date Work Completed, and Contract Award Amount. This information is necessary for OSDS to be able to identify the specific contract awarded to the prime contractor.
- The following Prime Contractor Information is required: Name, Address, Phone Number, Email, Date last payment Received, and Contract Received Amount. This information is necessary because the prime contractor is responsible for the execution/completion of the contract.

The Prime Contractor is required to provide the following information for each DVBE firm involved with the contract:

- DVBE Subcontractor Name, DVBE Subcontractors(s) Address, DVBE Certification ID Number, Total Contract Commitment Percentage to DVBE, Total Contract Commitment Amount to DVBE, Total Payment Amount to DVBE, and Comments/Explanations. This information is necessary to verify the prime contractor is adhering to the DVBE subcontracting requirements set forth in Military and Veterans Code 999.5.
- Difference in Amount paid to DVBE, Percentage Paid to DVBE, Number of DVBE Subcontractors, Grand Totals will auto calculate. This information is necessary for the department that awarded the contract to the prime contractor to calculate the total amounts received from all prime contractors in order to submit a department report to OSDS.

The Prime Contractor is required to provide the following information to certify under penalty of perjury that all the information submitted on the Certification is true and correct:

- Prime Contractor Name, Title, Signature and Date. This information is necessary to satisfy the requirements set forth in Military and Veterans Code section 999.7.

The Certification contains instructions for each field. This information is necessary to help prime contractors understand the information needed to fill out the Certification correctly.

Economic Impact Assessment

Benefits of the Regulations to the Health and Welfare of California Residents, Worker Safety, and the State's Environment:

While these changes may promote transparency and reduce legal interpretations, these changes will have no apparent benefit on the health and welfare of California residents, worker safety and the state's environment.