

Modified Regulation Text 5/15/2023

Final Text of SB/DVBE Regulations:

Originally proposed changes are indicated in underline for additions and ~~striketrough~~ for deletions. Newly proposed changes are indicated in double underline for additions and ~~double striketrough~~ for deletions.

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 1896.2. Authority.

The Department shall have the sole responsibility for certifying and determining the eligibility of small businesses and microbusinesses pursuant to the provisions of the Small Business Procurement and Contract Act (henceforth, "Act"), Article 1 of Chapter 6.5, Part 5.5 of Division 3, Title 2, Government Code, commencing with section-§ 14835. The Department's Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) shall carry out the regulatory and statutory responsibilities necessary for the promulgation of the Act.

When authorized by the applicant, the OSDS may share certification data and information with other state, federal, or local agencies and for other purposes authorized by law of enabling the applicant to become certified as a small business with other public agencies.

Note: Authority cited: Sections 14837, 14839.1 and 14843, Government Code.

Reference: Sections 14600, 14835, 14837, 14839 and 14842.5, Government Code.

Section 1896.4. Definitions.

The terms defined in this article shall have the following meanings whenever they appear in this subchapter:

(a) Affiliate or affiliation refers to a relationship of direct or indirect control or shared interests, as determined in section-§ 1896.12, subdivision (d)(6), between the applicant or a small business and another business.

(b) ALJ means Administrative Law Judge appointed by the Office of Administrative Hearings in accordance with Government Code section§ 11502, subdivision (b).

[No change to subsections (c) through (j).]

(k) Disabled Veteran Business Enterprise (DVBE) means a business-~~se~~ defined in the Military and Veterans Code section§ 999, subdivision (b)(7)(A).

Modified Text – CCR, Title 2, §§ 1896 – 1896.26; 1896.60 – 1896.97; 1896.99.100 – 1896.99.120

(#) 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).

(m) Employee means an employed individual that is:

- (1) Reported as an employee to the State of California, Employment Development Department (EDD) on the business's Quarterly Contribution Return and Report of Wages or other format accepted by EDD; or
- (2) Reported as an employee by the business on another state's report equivalent to the EDD's Quarterly Contribution Return and Report of Wages; or
- (3) A person whose wages are reported to EDD on behalf of the business by a professional employer organization (PEO) or other human resource entities.

(nm) [No change to text.]

(on) [No change to text.]

(pe) Microbusiness means:

- (1) A ~~a~~ small business that, together with affiliates, has average annual gross receipts of five million (\$5,000,000) dollars or less over the previous three (3) years, as biennially adjusted by the director of the department pursuant to the provisions of as defined in Government Code section § 14837, subdivision (d)(2) and (d)(3), or
- (2) ~~is a~~ A manufacturer, as defined in Government Code section § 14837, subdivision (c), that, together with all affiliates, has twenty-five (25) or fewer employees ~~and is designated as such in section 1896.12, subsection (b) with twenty-five (25) or fewer employees.~~

(qp) Net bid price means the verified price of a bid, after all adjustments described in the solicitation have been made.

(rq) [No change to text.]

(sr) Principal office means ~~the place a physical location~~ where the business is headquartered and where management, direction and control of operations originate ~~conducts management and directs operations of the business.~~ In accordance with section 1896.12, the street address or physical location must be in California. Post office boxes (P.O. Box) and private mailboxes (PMB) are not acceptable replacements for a physical business street address.

(ts) Responsive bid and ~~Responsive-Responsible bidder~~ means the same as are defined in the State Contracting Manual Volume 2 Chapter 4.D2.0 defines 14 Section 1404.2.

(ut) Small Business means a business that meets the eligibility requirements contained herein; and has been certified by OSDS as a small business as defined in Government Code section 14837, subdivision (d)(1)(A) and in accordance with the requirements of

section 1896.12. For the purposes of these regulations, whenever the term small business is used, it means a certified small business and includes microbusinesses and small businesses for the purpose of public works.

~~(v)~~ Small Business for the purpose of public works ~~is~~ as defined in Government Code section § 14837, subdivision (d)(1)(B) and certified in accordance with the requirements of Section 1896.13.

~~(w)~~ Solicitation is defined in the State Contracting Manual Volume 2 Chapter 4.B1.0-14 Section 1405.1.

~~(x)~~ Subcontractor means a contractor who contracts directly with the prime contractor, and as defined in Public Contract Code section § 4113.

~~(y)~~ Tax return means all forms, schedules and attachments submitted to the Internal Revenue Service, the Franchise Tax Board and/or other jurisdictions.

Note: Authority cited: Sections 14600, 14837 and 14843, Government Code. Reference: Sections 927, 927.2, 11000, 11502, 14615, 14837, 14838, 14839.1 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 4.B1.0 and 4.D2.0 14, State Contracting Manual.

Article 2. Small Business Participation and Preferences

Section 1896.5. Small Business Participation Goals.

~~Pursuant to Government Code section 14836, the state should make every effort so that a fair proportion of total purchases and contracts or subcontracts be placed with small businesses, including microbusinesses and small businesses for the purpose of public works.~~

~~In order to facilitate the participation of small businesses and achieve the overall twenty-five percent (25%) small business participation goal on the total awarded contracts, state agencies may establish contract specific participation requirements for small businesses.~~

~~State agencies are required to make continuous efforts to expand the pool of certified small businesses and microbusinesses that participate in state contracts. Specifically, awarding departments should search and identify small businesses and microbusinesses that either have not participated or have not regularly participated in state contracting, and include them in solicitations.~~

~~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) In order to achieve the overall required twenty-five (25%) small business participation goal on the total awarded contracts, departments may set contract-specific~~

small business participation goal requirements. When setting contract-specific small business participation goals, For for each specific solicitation leading to a contract award, the highest ranking executive or designee of an awarding department may shall establish an appropriate small business participation requirement. Determining factors for setting an appropriate level of small business participation, as either a prime contractor, subcontractor, or supplier, may include but are not limited to:

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

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

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

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

(b) To qualify as a responsive bidder for contracts requiring small business participation, a bidder shall document at or prior to the time of bid opening a commitment to fulfill the participation requirement, in addition to meeting all other requirements.

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

(1) 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

(2) 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.

(d) 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:

(1) At least one partner is a small business; and

(2) 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.

(e) The bidder's authorized representative shall include the following:

(1) The name of each small business proposed for use in the contract;

(2) The dollar amount and percentage each small business shall perform in comparison to the total contract dollar amount; and

(3) A description of the tasks each small business will perform.

(f) 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.

Note: Authority cited: Sections 14836, 14837, 14838 and 14843, Government Code. References: Sections 14110.3, 14835, 14838, 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) ~~Small~~ A small businesses 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 ~~5:00 p.m. on 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 ~~(as specified in the solicitation)~~ per subcontractor as specified in the solicitation.

Note: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 14838, 14839, 14839.1 and 14840, Government Code; and Section 4113, Public Contract Code.

Section 1896.10. Substitution of a Small Business Subcontractor.

(a) After a contract has been awarded based in part on application of the non-small business subcontracting preference, the contractor must use the small business subcontractor(s) and/or supplier(s) specifically proposed in the bid to the state unless, in accordance with the provisions of the Subletting and Subcontracting Fair Practices Act (§ 4100 et seq., Public Contract Code), a substitution is requested in writing to the awarding department and the awarding department approves the substitution in writing prior to the commencement of any work by the substituted small business. The substitution request must include at least the following:

[No change to paragraphs (a)(1) and (2).]

- (3) A description of the work to be performed, identified both as a task(s) and as a dollar amount or percentage of the overall contract that the substituted

business will perform. The substituted business(es), if approved, shall be required to perform a commercially useful function in the contract as defined in section§ 1896.15.

[No change to subsection (b).]

(c) ~~If a~~ A contractor may requests substitution of its subcontractor(s)/supplier(s) by providing a written request to the awarding department in accordance with this section~~.,~~ The awarding department may consent to the substitution in any of the situations set forth in section§ 4107 of the Subletting and Subcontracting Fair Practices Act.

[No change to subsection (d).]

(e) Failure of the contractor to subcontract with the small businesses listed on its bid to the state, or follow these substitution rules may be grounds for the Department to apply such sanctions as Government Code sections§§ 14842 and 14842.5 and the subsequent provisions of this subchapter permit. In the event such sanctions are imposed, the contractor shall be notified in writing and entitled to a hearing pursuant to sections§§ 1896.18 and 1896.20.

Note: Authority cited: Sections 14837, 14842 and 14843, Government Code. Reference: Sections 14837, 14842 and 14842.5, Government Code; and Sections 4100, 4107 and 4107.5, Public Contract Code.

Article 3. 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) It's 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 one hundred (100) or fewer employees, and annual gross receipts of fifteen million dollars (\$15,000,000) 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 GARS ~~§~~ will be based upon the number of years in existence); or
 - (B) A manufacturer as defined herein that, together with all affiliates, has one hundred (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 of five million, dollars (\$5,000,000) 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 GARS will be based upon the number of years in existence); or

(2) A manufacturer as defined herein that, together with all affiliates, has twenty-five (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 may consider the applicant's organizational structure, operations and business relationships 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, as a result of mechanical, chemical, or human action, it did not possess 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 may be based on factors including, but not limited to, a review of:

- (A) Voter registration records;
- (B) Homeowner's property tax filings;
- (C) Driver's licenses;
- (D) Utility billings;
- (E) Individual state tax returns; and
- (F) 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 ~~as~~ Government Code section § 14837, subdivision (d)(1) mandates, shall ~~may 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 ~~whether a business is affiliated with another business~~ affiliations, with respect to the requirements under ~~satisfying~~ Government Code section § 14837, subdivision (d) requirements, may shall be based on factors including, but not limited to, historical and current factors including 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 ~~may 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 same industry-;
- and
- 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 ~~an outside source,~~ one or more individual(s) and/or another business entity 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) ~~An~~ One or more individual(s) outside person and/or business entities concern 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 an outside another business concern 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, ~~board of directors~~ 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 ~~kind of~~ 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.

(gf) 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.

(hg) 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.

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.

(a) 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 of thirty-six million dollars (\$36,000,000) or less over the previous three (3) tax years, 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 GARS will be based upon the number of years in existence). Subdivisions (c), (d), (e), (f), (g) and (if) of Section 1896.12 may 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.

Section 1896.14. Responsibilities of the Applicant Small Business.

(a) In order to be considered by OSDS for certification as a small business, a business must:

(1) Apply electronically via <https://caleprocure.ca.gov/pages/sbdvbe-index.aspx>; ~~or Applicants who do not have access to a computer may~~ submit a completed hard copy of the Request for Small Business, Small Business for the Purpose of Public Works and/or Disabled Veteran Business Enterprise Certification (Application) DGS PD 812 (Rev. 09/201911/4/2016), incorporated by reference, obtained at http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd_812.pdf <http://www.documents.dgs.ca.gov/pd/smallbus/SBDVBE CertApp.pdf> to OSDS; ~~The application must include including all of the~~ required substantiating documentation and information that supports the business' eligibility at the time of application for small business certification under the Small Business Procurement and Contract Act; and

- (2) Meet all eligibility requirements as set forth in ~~Section~~ Section 1896.12.
- (b) It is the responsibility of the business to remain eligible for certification by maintaining all eligibility requirements throughout the certification application process. OSDS must be immediately be notified of any changes, including but not limited to, in operation or ownership, the business name, principal and home address(es), contact information, organizational structure and knowledge of changes that can affect a firm's eligibility, i.e. e.g., exceeding the GARS limits and domicile, during the certification application process.
- (c) A business that does not meet the eligibility requirements for certification, or does not respond to requests from OSDS for additional information by the date and time specified, will be denied certification.
- (d) A ~~certified small~~ business shall keep current all of its licenses or permits during the certification application process.
- (e) Requests to withdraw the submitted application ~~must~~ shall be in writing.

Note: Authority cited: Sections 14837, 14839.1 and 14843, Government Code.
Reference: Sections 14837, 14839, 14840 and 14842.5, Government Code.

Section 1896.15. Definition and Determination of Commercially Useful Function (CUF).

[No change to subsections (a) through (c).]

- (d) Contracting/procurement officials of the awarding department must:
- (1) Evaluate if a certified small business (including microbusiness) awarded a contract meets the CUF requirement as defined in subdivision (b), and
 - (2) ~~During the duration of the contract, M~~monitor for CUF compliance for the duration of the contract. (see See State Contracting Manual Volume 1 Chapter 8 and Volumes 2 and 3, Chapter 12, Section 1200.1 123).
 - (3) Verify the procurement file contains all signed documents a certification, signed under penalty of perjury, that the work performed in fulfillment of the contract requirements is CUF-compliant-certified under penalty of perjury in accordance with the requirements in ~~Military and Veterans Code section 999.10, subdivision (a)(3) and Government Code section 14837, subdivision (d)(4).~~
- (e) If a CUF evaluation identifies potential program violations, the awarding departments shall investigate and report findings to the OSDS in accordance with section§ 1896.2017, subdivision (ag).

Note: Authority cited: Sections 14837, 14839.1 and 14843, Government Code.
Reference: Sections 14837, 14839 and 14842.5, Government Code; Sections 999, and 999.6 and 999.10, Military and Veterans Code; and ~~Volume 1, Chapter 8 and Volumes 2 and 3, Chapter 123,~~ State Contracting Manual.

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, in its operation or ownership, and knowledge of changes that could affect a firm's continuing eligibility, e.g., i.e., exceeding the GARS limits and domicile, during its certification period that may affect its continuing eligibility as a small business. Should a small business be sold during its certification period, the certification ceases and is not transferable to new owners. New owners may seek certification in accordance with section§ 1896.14.

(d) Certification shall be issued for twenty four (24) months. OSDS, in its discretion, may issue ~~shorter~~ certifications of shorter durations for businesses, on a case-by-case basis, based in accordance with ~~on~~ 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. ~~Within ninety (90) days of a certification expiration, businesses may apply for recertification in the manner set forth in § 1896.14.~~

(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.

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

(gf) 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 the time specified 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 (ba)(5).

~~(h) A business may request in writing.~~ 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.

Section 1896.17. Denied, Discontinued or Revoked Certification and the Imposition of Sanctions.

(a) A business' request for small business certification (application) will be denied on any of the following grounds:

(1) A business does not meet the eligibility requirements for certification, submits insufficient documentation to demonstrate eligibility, or does not respond to requests from OSDS for additional information by the date and time specified.

(2) The application and supporting documents, including any additional information subsequently provided by the business for correction, amendments and/or clarification, ~~does~~ not meet the eligibility requirements.

(3) When the application for certification is submitted by a business or one or more principals of a business (new or existing) that is formed, financed by, or affiliated with a business suspended from contracting with the state of California, or whose certifications have been revoked, in accordance with Government Code sections 14842, or 14842.5 or Military and Veterans Code sections 999.9, ~~et seq.~~

(4) Applicants without an active status with the California Secretary of State or Contractors State License Board, when legally required to do so.

(b) OSDS may discontinue the certification of a small business for any of the following reasons, including but not limited to:

(1) Failure by a small business to provide requested information that supports its continued eligibility as a certified small business, by the date and time specified by the OSDS;

(2) Failure to reinstate to active status with the Secretary of State, Contractors State License Board, or other such authorities during the period of certification;

(3) The average annual gross receipts and/or employee limits imposed by section Subdivisions 1896.12, subdivisions (a) and (b) have been exceeded during the period of certification;

(4) The officers, owners, and/or partners, managers or members of the small business fail to satisfy the California domicile requirement described in Government Code section§ 14837, subdivision (d)(1);

(5) If a small business or small business for the purpose of public works is determined by OSDS to no longer meet the eligibility requirements of this subchapter.

(c) Restoration ~~of~~ After Discontinuance:

(1) Certified status shall be restored for the remaining period of certification when satisfactory action on the part of the certified entity corrects identified insufficiencies.

~~(db) The~~ If a business holds both, the small business certification and the DVBE disabled veteran business enterprise certification, both certifications if the business has both certifications, shall be revoked for a period of not less than five (5) years if the business violates subdivision (a) of Government Code section§ 14842, subdivision (a) is violated. For additional or subsequent violations, the revocation shall be extended for a period of up to ten (10) years. Revocation applies to principals of business and any subsequent business formed by one or more of those principals, as set forth by Government Code section§ 14842, subdivision (e) sets forth.

~~(ee) A business that has obtained certification on the basis of after having furnished incorrect or incomplete supporting information and that knew, or should have known, that the information furnished was incomplete, or incorrect, subject to change impacting eligibility or should not have been withheld was incorrect, incomplete and/or relevant to the process of obtaining small business certification, and the result is thereafter based on either furnishing incorrect and/or incomplete information or withholding information, which they knew or should have known would affect their certification eligibility, and, as a result, was awarded of any a contract to which it would not otherwise have been entitled, shall, in accordance with Government Code section§ 14842:~~

- (1) Pay to the state any difference between the contract amount awarded to the business and the contract amount had ~~it~~ the business been properly awarded; and
- (2) Pay to the awarding state agency and the Department an amount equal to the costs incurred for investigating the certification that ~~lead~~ led to the finding that the contract had been improperly awarded; and
- (3) The business shall be assessed an additional penalty in ~~an~~ the amount of not more than ten percent (10%) of the amount of the contract ~~involved.~~

~~(fd) The Department shall suspend any person who violates subdivision (a) of Government Code section§ 14842 from transacting any business with the state in the capacity of a contractor or a subcontractor for a period of not less than three (3) years and not more than ten (10) years. State agencies may reject the bid of a supplier offering goods, information technology, or services manufactured or provided by a subcontractor if that the supplier or subcontractor has been declared ineligible to transact any business with the state pursuant to Government Code section§ 14842, even though the bidder is a business in good standing otherwise.~~

~~(ge) Government Code section§ 14842.5, subdivision (a) makes it unlawful for any person to:~~

- (1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain:
 - (A) Small business or microbusiness certification;
 - (B) Public moneys, contracts, or funds expended under a contract, that are awarded by any state agency, department, officer, or other state governmental agency, to which the person is not entitled under the Act;
- (2) Knowingly and with intent to defraud, fraudulently represent:
 - (A) Certified small business or microbusiness participation in order to obtain or retain a bid preference or a state contract;
 - (B) That a commercially useful function is being performed by a

certified small business or microbusiness in order to obtain or retain a bid preference or a state contract;

(3) Willfully and knowingly:

(A) Make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the small business or microbusiness certification or denial of certification;

(B) Obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity that has requested small business or microbusiness certification;

(C) Make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;

or:-

(D) Aid or assist in, or procure, counsel, or advise, the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.

(4) Establish, or knowingly aid in the establishment of, or exercise control over a firm found to have violated any provisions of subdivisions (e)(1), (e)(2), or (e)(3).

(5) Any person in violation of subdivisions (e)(1), (e)(2) or (e)(3) shall pay all investigation costs leading to the finding of the violation:

(A) Incurred by the awarding state agency; or

(B) Incurred by the Department of General Services;

(6) Investigation costs shall include, but are not limited to costs and attorneys' attorney's fees related to hearings and court appearances.

(h) Any suspension, revocation and/or civil penalty issued pursuant to Government Code ~~sections~~ §§ 14842 or 14842.5 shall, unless otherwise statutorily specified, apply to the principals of the business, and neither the business nor the principals may re-apply for certification, either as the same business or a new business, for a period of not less than three (3) years, nor more than ten (10) years, from the date of certification revocation.

~~(g) Awarding departments shall address allegations of a violation of Government Code §§ 14839(i), 14840(a), 14842(a) or 14842.5(a) by gathering supporting evidence and assembling documentation relevant to the case. In order for such allegations to be considered for action by DGS, awarding departments must submit to OSDS a written report with a description of the matter or incident, findings, supporting evidence and recommended action within sixty (60) business days of notification or discovery of the alleged violation. OSDS will acknowledge that the matter has been referred to DGS within three (3) business days from receipt. An extension for the submission of the written report may be granted by OSDS, after receiving a written request justifying additional time. OSDS may pursue Government Code §§ 14842 or 14842.5 penalties or sanctions based upon the awarding department referrals cited in this subdivision.~~

~~(h) When denying certification, discontinuing small business certification, or imposing any other sanction, including suspension, revocation, monetary penalty, or cost~~

recovery, the OSDS will notify the business will be notified in writing. The notice shall include the reasons for the determination together with the statutory or regulatory authority or basis for such action, and provide information regarding the process for of restoring the certification or appealing the decision(s).

Note: Authority cited: Sections 14837, 14839.1 and 14843, Government Code.
Reference: Sections 4525, 14836, 14837, 149398, 14840, 14841, 14842 and 14842.5, Government Code; and Section 1101, Public Contract Code.

Article 4. Appeals Enforcement and Sanctions

Section 1896.18. Enforcement.

OSDS shall be responsible for the enforcement of ~~Government Code sections 14835, et seq., Military and Veterans Code sections 999.9, et seq., and Public Contract Code sections 10115, et seq.~~ The enforcement actions include certification denial or revocation, suspensions from contracting with the state, and the imposition of monetary penalties and/or cost recovery to the state, as follows: in accordance with Government Code sections 14842 and 14842.5.

(a) Certification Denial or Revocation: When a business does not meet the requirement for certification, or is no longer eligible due to a violation of ~~meets the eligibility requirements as set forth in~~ Government Code section 14842, subdivision (a), Government Code section 14842.5, subdivision (a), or subdivision (a) of Military and Veterans Code section 999.9, or Public Contract Code section 10115.10, all certifications shall be denied or revoked. When denying or revoking certification, the OSDS shall provide written notice including the reasons for the denial or revocation and provide information regarding the appeal process.

(b) Suspension: A business may be suspended from state contracting activities. Suspension means a temporary debarment from bidding on or participating as a contractor, subcontractor or supplier in any state contract or project, and includes a revocation of certification unless the suspended business is not certified. When suspending a certified business from contracting activities, the OSDS shall provide a written notice of suspension and revocation including the reasons for suspension and revocation and provide information on the appeal process. The suspension and revocation shall apply to all ~~to~~ of the principals of the businesses formed, owned, ~~or~~ financed by, or affiliated with, one or more of those principals. Any allegation with sufficient grounds may be referred to the Attorney General for possible prosecution and imposition of civil/criminal sanctions for violation of Government Code sections 14842, subdivision (a), and 14842.5, subdivision (a). The OSDS may pursue administrative action and penalties irrespective of whether the Attorney General chooses to bring an action.

Note: Authority cited: Sections 14837, 14839.1 and 14843, Government Code.
Reference: Sections 4535, 14836, 14837, 14839, 14840, 14841, 14842, and 14842.5, Government Code; Section 999.9, Military and Veterans Code; and Sections 1101 and

10115.10, Public Contract Code.

Section 1896.20. Investigations and Reporting Requirements.

Nothing in these regulations shall be construed to impair the right of either the administering agency or the awarding department to initiate investigations pursuant to Government Code sections 14835 et seq., Military and Veterans Code sections 999.9, et seq., and Public Contract Code section 10115, et seq.

(a) Awarding departments shall address allegations of a violation of Government Code sections 14839, subdivision (bc), 14840, subdivision (a), 14842, subdivision (a), and 14842.5, subdivision (a), by gathering supporting evidence and assembling documentation relevant to the case.

(b) In order for such allegations to be considered for action by DGS, awarding departments must submit to the OSDS a written report with a description of the matter or incident, investigative findings, supporting evidence and recommended action within sixty (60) business days of notification or discovery of the alleged violation.

(c) The OSDS will acknowledge that the matter has been referred to DGS within three (3) business days from receipt. An extension for the submission of the written report may be granted by OSDS, after receiving a written request justifying additional time. The OSDS may pursue Government Code section 14842 or 14842.5 penalties or sanctions based upon the awarding department's referrals cited in this section.

Note: Authority cited: Sections 14837, 14839.1 and 14843, Government Code. Reference: Sections 4525, 14836, 14837, 14839, 14840, 14841, 14842 and 14842.5, Government Code; and Section 1101, Public Contract Code.

Article 5. Appeals.

Section 1896.22-1896.18. Appeal of Certification Denial, Discontinuance, or the Imposition of Sanctions.

(a) A business, having been denied certification as a small business, or having been provided written notice by OSDS of its intention to discontinue certification of the business as a small business, or of its intention to impose sanctions, have has thirty (30) calendar days from the date of the written notice to appeal the Department's determination. Appeals are not available for denials on the ground that the business did not respond to OSDS' request for additional information as specified in subdivision (f).

(b) OSDS will specify the appeal deadline in its notice. The appeal shall be in writing, signed, dated, and include a detailed written statement of the facts supporting the appeal as ~~subchapter~~ subdivision (c) requires.

(c) Grounds for appeal shall be on any of the following areas:

(1) The applicant should have been certified as a small business based on the

information contained in the application including, if applicable, supplemental material submitted to OSDS upon its request, as of the date of the notice of certification denial.

(2) The business should remain certified as a small business based on the information contained in the application, including, if applicable, supplemental material submitted to OSDS upon its request, as of the date of the determination.

(3) Sanctions should not be imposed, because one or more of the just causes or conditions set forth in Government Code ~~sections §§~~ 14840, 14842 or 14842.5, as applicable, did not exist.

(d) For good cause, ~~the~~ OSDS may extend the time to file an appeal.

(e) An appeal shall be treated as a new request for certification when an appellant provides new information that was not made available prior to OSDS' decision to deny or discontinue the certification.

(fe) Upon receipt of an appeal, OSDS will determine jurisdiction and the decision shall be final. An appeal may be rejected if:

(1) The appeal is not timely, or the denial of certification was based on the business, without good cause, not providing the requested information ~~has not been provided~~ in a timely manner;

(2) Submission of new information is subsequent to OSDS' a decision to deny or discontinue the certification ~~or after a written deadline has passed~~; or

(3) The appeal is based on grounds other than those specified in section § 1896.2248, subdivision (c).

(gf) The OSDS will forward appeals that are not rejected to the Office of Administrative Hearings.

Note: Authority cited: Sections 14837, 14839 and 14843, Government Code. Reference: Sections 14839.1, 14840, 14842 and 14842.5, Government Code.

Section 1896.24 ~~1896.20~~. Appeal Hearings.

Appeal hearings shall be conducted, for the purposes of this subchapter, in accordance with the Administrative Procedure Act, Chapter 5, Part 1 of Division 3, Title 2, Government Code, commencing with section § 11500. The ALJ has sole discretion as to whether to conduct a hearing, or proceed with a decision based solely on the written material. If a hearing is held, the ALJ shall have discretion to limit the number of witnesses and the time allocated to each, and authority to permit or limit cross-examination. There shall be no right to take depositions, issue interrogatories, and accept submission of non-party Amicus Briefs or documents.

Note: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 11500, 11501, 11502, 11503, 11504, 11504.5, 11505, 11506, 11507, 11507.3, 11507.5, 11507.6, 11507.7, 11508, 11509, 11511.5, 11511.7, 11512, 11513, 11514, 11515, 11516, 11517, 11518, 11518.5, 11519, 11520, 11521, 11523, 11524, 11526, 11527 and 11528, Government Code.

Section 1896.26 ~~1896.22~~. Appeal Decisions.

Modified Text – CCR, Title 2, §§ 1896 – 1896.26; 1896.60 – 1896.97; 1896.99.100 – 1896.99.120

The ALJ shall uphold or deny the appeal, and may impose sanctions, in accordance with Government Code sections §§ 14842 and 14842.5. ~~Unless specified in the ALJ order, the ALJ's decision shall be final and effective within five (5) days from the date of service of the decision to the OSDS.~~

Note: Authority cited: Sections 14837 and 14843, Government Code. Reference: Sections 115197, 14842 and 14842.5, Government Code.

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

Article 1. General Provisions

Section 1896.60. Purpose of Subchapter.

The purpose of this subchapter is to set forth the rules for participation in the Disabled Veteran Business Enterprise (DVBE) program; and the rules, roles, responsibilities and rights of businesses and the state as they pertain to DVBE participation goals and certification.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 14837 and 14839, Government Code; Sections 999, 999.2, 999.5, 999.6 and 999.9, Military and Veterans Code; Sections 10115, and 10115.9, and 10230, Public Contract Code; Executive Order (EO) D-43-01; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, 138 F.3d 1270 (March 9, 1998).

Section 1896.61. Authority.

(a) The Department shall have the sole responsibility for determining the eligibility of and certifying businesses as DVBEs pursuant to provisions of Article 6 of Chapter 6 of Division 4, commencing with section § 999 of the Military and Veterans Code, and of section § 10115.9, Public Contract Code and sections §§ 14839 and 14843, Government Code.

(b) When authorized by the applicant, the Department may share certification data and information with other state, federal or local agencies for purposes of enabling a DVBE applicant to become certified with other public agencies.

Note: Authority cited: Sections 14600, 14837 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 14837 and 14839, Government Code; Sections 999.5, 999.55, 999.7 and 999.9, Military and Veterans Code; and Sections 10115.9 and 10230, Public Contract Code.

Section 1896.62. Definitions.

The terms defined in this article shall have the following meaning whenever they appear in this subchapter and subchapter 10.6:

(a) ALJ means Administrative Law Judge, appointed by the Office of Administrative Hearings in accordance with Government Code section§ 11502, subdivision (b).

[No changes to subsection (b).]

(c) Awarding department is as defined in Military and Veterans Code section§ 999, subdivision (b)(2).

[No changes to subsections (d) through (g).]

(h) Contract is as defined in Military and Veterans Code section§ 999, subdivision (b)(4).

[No changes to subsection (i).]

(j) Control, as subdivision (b)(10) of section§ 999 of the Military and Veterans Code references, means the disabled veteran owners and/or disabled veteran managers, have the power and authority to determine the overall destiny and day-to-day operations of the business.

[No changes to subsection (k).]

(l) Disabled veteran (DV) means a veteran of the military, naval or air service of the United States, including but not limited to, the Philippine Commonwealth Army, the Regular Scouts (“Old Scouts”), and the Special Philippine Scouts (“New Scouts”), who has at least a ~~40~~ten percent (10%) service-connected disability and who is domiciled in the State of California.

(m) Disabled Veteran Business Enterprise or DVBE is as defined in Military and Veterans Code section§ 999, subdivision (b)(7).

(n) Discontinuance means a gap in certification remediable by restoration of certified status in accordance with section§ 1896.85.

(o) DVBE Joint Venture means one or more DVBEs that have entered into a written agreement with at least one other business to hold a minimum of ~~51~~fifty-one percent (51%) or more of the joint venture’s management, control, and earnings, and to engage in and carry out a venture for which purpose they combine their efforts, property, money, skills and/or knowledge.

(p) Foreign corporation, foreign firm and foreign-based business has the same meaning as Military and Veterans Code section§ 999, subdivision (b)(8).

[No changes to subsection (q).]

(r) Non-disabled veteran (Non-DV) means any individual who is not a Military and Veterans Code section§ 999, subdivision (b)(7)(A) recognized DVBE.

[No changes to subsection (s).]

(t) Principal office is the ~~place~~ physical location where the business is headquartered, ~~conducts and where management, and directs direction and control of operations of the business originate~~ and has the same meaning as “home office” referenced in Military and Veterans Code section§ 999, subdivision (b)(7)(A)(iii). Post office boxes (P.O. Box) and private mailboxes (PMB) are not acceptable replacements for a physical business street address.

[No changes to subsection (u).]

(v) Subcontractor means the same as Military and Veterans Code section§ 999.10, subdivision (c).

Note: Authority cited: Sections 14600, 14615, 14839 and 14843, Government Code; Sections 999 and 999.5, Military and Veterans Code; and Section 10295, Public Contract Code. Reference: Section 11502, Government Code; Sections 999, 999.2 and 999.10, Military and Veterans Code; and Sections 10115, 10115.1, 10115.2, 10115.3, and 10115.10, and 10230, Public Contract Code.

Article 2. DVBE Participation in State Contracting

Section 1896.70. DVBE Participation Goals.

(a) DVBE statewide participation goals established in Military and Veterans Code sections§§ 999.2, subdivision (a) and 999.5 and Public Contract Code section§ 10115, subdivision (c), apply to the aggregate amount annually spent by contract by the awarding departments.

(b) For each specific solicitation leading to a contract award, the ~~Director~~ highest ranking executive or designee of an awarding department shall establish an appropriate DVBE participation goal either less than or in excess of the statutory goal of ~~3~~ three percent (3%). ~~Determining factors for setting~~ Determination factors of the an appropriate level of DVBE participation, as either a prime contractor or subcontractor, include but are not limited to the following:

- (1) The elements of work reasonably support the specified level of DVBE participation.
- (2) A search of the OSDS certification database indicates sufficient DVBEs to perform the solicited work.
- (3) DVBE contractors, subcontractors, or suppliers have performed elements of the work on similar contracts.
- (4) Bidders historically have achieved or have not achieved the specified level of participation.

(c) The awarding department's ~~Director~~ highest ranking executive or designee may

Modified Text – CCR, Title 2, §§ 1896 – 1896.26; 1896.60 – 1896.97; 1896.99.100 – 1896.99.120

exempt a solicitation from DVBE participation. ~~Determining~~ Determination factors for such exemption include, but are not limited to the following:

- (1) Few or no DVBE subcontracting opportunities.
 - (2) Subcontracting the work is not normal for the industry.
 - (3) Work is so specialized that few or no DVBEs can perform it.
 - (4) Procurement pursuant to Government Code ~~sections~~ §§ 14838.5, subdivision (a) or 14838.7, subdivision (a).
- (d) To qualify as a responsive bidder for contracts requiring DVBE participation, a bidder shall document at or prior to the time of bid opening a commitment to fulfill the participation goal, in addition to meeting all other requirements.
- (e) The commitment to achieve the participation goal is satisfied when the awarding department determines that the bidder is either:
- (1) A DVBE who performs a Commercially Useful Function (CUF), as section § 1896.71 requires, and meets or exceeds the participation goal stated in the solicitation; or
 - (2) A non-DVBE who uses one or more DVBEs to perform a CUF and who meets or exceeds the participation goal stated in the solicitation.
- (f) The awarding department shall find that a DVBE joint bid has met the participation goal providing the joint bidders satisfy all of the following conditions:
- (1) At least one partner is a DVBE; and
 - (2) At least one DVBE 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.
- (g) The bidder's authorized representative shall include the following:
- (1) The name of each DVBE proposed for use in the contract;
 - (2) The dollar amount and percentage each DVBE shall perform in comparison to the total contract dollar amount; and
 - (3) A description of the tasks each DVBE will perform.
- (h) Contracts between the state and other government agencies including public colleges as well as agreements executed for subvention aid or local assistance, or to provide assistance to local governments and aid to the public directly or through an intermediary, such as a non-profit corporation, are exempt from DVBE participation requirements.
- (i) Contracts with auxiliary organizations or foundations of public colleges and universities are not subject to DVBE participation requirements when the agency directly contracts for work utilizing the organization's staff or students.

Note: Authority cited: Sections 14600 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 14615, 14838.5 and 14838.7, Government Code; Sections 999, 999.1, 999.2, 999.5, 999.55 and 999.75, Military and Veterans Code; and Sections 10115, 10115.2, ~~and~~ 10115.9 and 10230, Public Contract Code.

Section 1896.71. Definition and Determination of Commercially Useful Function (CUF).

[No changes to subsections (a) through (c).]

Modified Text – CCR, Title 2, §§ 1896 – 1896.26; 1896.60 – 1896.97; 1896.99.100 – 1896.99.120

- (d) Contracting/procurement officials of the awarding department must:
- (1) Evaluate if a DVBE awarded a contract meets the CUF requirement as defined in subdivision (b), and
 - (2) During the duration of the contract, monitor for CUF compliance (See State Contracting Manual Volume 1 applicable chapters Chapter 8 and Volumes 2 and 3, Chapter 12, Section 1200.1-123).
 - (3) Verify the procurement file contains all signed documents certified the certification required by under penalty of perjury in accordance with Military and Veterans Code sections 999.10, subdivision (a)(3) and 999, subdivision (b)(5)(B).

(e) If a CUF evaluation identifies potential program violations, awarding departments shall investigate and report findings to OSDS, referring to sections §§ 1896.88, 1896.91 and the State Contracting Manual.

Note: Authority cited: Sections 14600 and 14839, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 14837 and 14615.1, Government Code; ~~and~~ Sections 999, 999.5, 999.55, 999.6 and 999.9, Military and Veterans Code; and Section 10230, Public Contract Code.

Section 1896.72. Contract Award Considerations.

- (a) If a bidder fails to meet a required DVBE participation goal, the bidder shall be deemed unresponsive and ineligible for award.
- (b) With respect to Invitations For Bid for the purchase of supplies or equipment in accordance with Article 3 of Chapter 2 of Part 2 of Division 2, commencing with section § 10301 of the Public Contract Code or the acquisition of information technology (IT) goods and services in accordance with Chapters 3 and 3.6 of Part 2 of Division 2, commencing with section § 12100 of the Public Contract Code, where the awarding department has reserved the right to make either multiple awards or a single contract award, ~~then~~ a single bidder shall be deemed responsive based on the award for a single contract, notwithstanding the fact that the bidder may be unable to meet the established DVBE participation goal. How a department understands and applies the distinction between multiple or single contract awards is set forth in Volumes 2 and 3 of the State Contracting Manual.
- (c) Prior to contract award, the DVBE shall assure it is in compliance with Public Contract Code sections §§ 10410 and 10411 and any other relevant conflict of interest or incompatible activities prohibition applicable to state officers, state employers, or former state employees.

Note: Authority cited: Sections 14600 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 146145.1 and 19990, Government Code; Sections 999, 999.5, 999.55, 999.7 and 999.10, Military and Veterans Code; Sections 10115.2, 10230, 10295, 10300, 10410, 10411 and 12100, Public Contract Code.

Section 1896.73. Substitution of a DVBE Subcontractor.

Modified Text – CCR, Title 2, §§ 1896 – 1896.26; 1896.60 – 1896.97; 1896.99.100 – 1896.99.120

(a) Any substitution of a DVBE subcontractor shall be by another DVBE subcontractor. The substitution shall be to perform work stated in the original bid and can occur only if approved by OSDS in writing prior to the commencement of any work by another DVBE subcontractor. The substitution shall maintain, at minimum, the level of DVBE participation stated in the original bid.

[No changes to subsections (b) through (e).]

(f) Upon the awarding department's determination that there are legitimate reasons for a DVBE subcontractor replacement, the awarding department shall submit a substitution request to the OSDS:

[No changes to paragraphs (f)(1) and (2).]

(3) If a DVBE cannot be identified as a replacement, the contractor shall document the absence of DVBEs as subdivisions (f)(3)(A) through (E) set forth, and include the applicable contract modifications section § 1896.76 requires under such circumstances.

[No changes to paragraphs (f)(3)(A) through (E).]

(g) OSDS will respond to substitution requests within three (3) business days. Consent to replacement of another DVBE subcontractor shall be in any of the following situations ~~in harmony consistent~~ with, or conforming to the public works substitution provisions of Public Contract Code section § 4107, and in accordance with the replacement authority granted DGS by Military and Veterans Code section § 999.5, subdivision (g):

[No changes to paragraphs (g)(1) through (4).]

(5) When the prime contractor demonstrates to the awarding department that the intended DVBE subcontractor named on the listing was incorrect due to an inadvertent clerical error. In the case of public works contracts, compliance with Public Contract Code section § 4107.5 is required.

[No changes to paragraph (g)(6) through subsection (h).]

(i) Contractors who proceed with work ~~pending without~~ OSDS's approval of a substitution decision may be subject to contract termination, and/or the recovery of damages and penalties ~~under the rights, remedies and penalties provisions of the statute statutory provisions~~, including those outlined in ~~§ 999.9 of the Military and Veterans Code~~ section 999.9, ~~§ 40115.10 of the Public Contract Code~~ section 10115.10, or ~~§ 4110 of the Public Contract Code~~ section 4110 (applies to public works only).

Note: Authority cited: Sections 14600 and 14839, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 999, ~~999.55~~, 999.5, ~~999.55~~, 999.7 and 999.9, Military and Veterans Code; and Sections 4107, 4107.5, 4110, 10115.1, 10115.2,

Modified Text – CCR, Title 2, §§ 1896 – 1896.26; 1896.60 – 1896.97; 1896.99.100 – 1896.99.120

10115.10, 10230 and 10295, Public Contract Code.

Section 1896.74. Contract Approval.

For purpose of Public Contract Code section§ 10295, an awarding department shall demonstrate compliance with the part of Article 1.5 (commencing with § 10115) of Chapter 1 of Part 2 of Division 2 of the Public Contract Code that concerns DVBEs.

Note: Authority cited: Sections 14600 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 999.5, 999.55 and 999.7, Military and Veterans Code: and Sections 10115.10, 10230 and 10295, Public Contract Code.

Section 1896.75. Special Requirements for Contracts that include Rented Equipment.

(a) Any DVBE renting equipment for use in any state contract shall, prior to performing the contract, submit a declaration signed by DV owners and DV managers as required by Military and Veterans Code section§ 999.2, subdivision (d). Declarations may be submitted on a form made available as part of the solicitation and must include the following:

- (1) The name, address, telephone number, and tax identification number of each DV owning at least fifty-one 51-percent (51%) of each piece of equipment.
- (2) Declare that complete copies of each DV equipment owner's individual federal income tax return ~~has~~have been provided to OSDs and that each applicable DVBE has met and maintains all certification requirements, including post certification submission of all federal tax returns.
- (3) Declaration of whether or not the DVBE is a broker. Any qualifying disabled veteran who does not own fifty-one 51-percent (51%) of the fair market value of the equipment, materials, and supplies shall be deemed a broker or agent. If the DVBE is a broker, the name, address, and telephone number of the DVs acting as a broker or agent is required.

(b) Failure to provide these declarations to the awarding department will result in the DVBE being deemed an equipment broker in accordance with Military and Veterans Code section§§ 999.2, subdivisions (b) and 999.2(c). Awarding departments shall not count any contract or subcontract with an equipment broker toward DVBE participation goals. In addition, DVBE equipment brokers shall not be considered for the award of SB/DVBE options afforded under Government Code sections§§ 14838.5 and 14838.7.

Note: Authority cited: Sections 14600 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 14838.5 and 14838.7, Government Code; Sections 999.2, and 999.5, 999.55 and 999.7, Military and Veterans Code; and Sections 10108.7, 10230 and 10295, Public Contract Code.

Section 1896.76. Contract Modifications.

The contractor and awarding department may determine the need to amend a contract. The contract should describe how modifications would be handled to maintain the highest level of DVBE participation. If the modification is for additional work, the awarding department should maintain at least the same percentage of DVBE participation as in the original contract. The contracting official shall document the file to describe the modifications and DVBE participation.

Note: Authority cited: Sections 14600 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 999.5, 999.55 and 999.7, Military and Veterans Code; and Section 10230, Public Contract Code.

Section 1896.77. Contract Audits.

(a) When an awarding department issues a contract, it shall include a provision, where the contractor agrees that the awarding department shall have:

- (1) The right to review, obtain, and copy all records pertaining to the performance of the contract;
- (2) Any relevant information requested; and
- (3) Access to its premises, upon reasonable notice, during normal business hours for the purpose of interviewing employees and inspecting and copying such books, records, accounts, and other material that may be relevant to a matter under investigation.

(b) For completed contracts with DVBE subcontractor commitments, the contractor will shall provide proof of payment for the work performed by the DVBE subcontractor upon request from the awarding department.

(c) Contractor further agrees to maintain such records for a period of six ~~three~~ years after final payment under the contract.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; and Sections 10115.3(b) and 10295, Public Contract Code. Reference: Section 8546.7, Government Code; Sections 999.5(d) and 999.55, Military and Veterans Code; Section 10115.3(a), Public Contract Code; and State Contracting Manual, Volume One, ~~Chapter 7, Subdivision 7.50.~~

Section 1896.78. Reporting DVBE Participation Goals.

(a) DVBE participation must be included in the contracting activity report by awarding departments as required by Public Contract Code section§ 10111, section§ 999.5, subdivision (d) of the Military and Veterans Code and ~~§ 14841 of the Government Code~~ section 14841 require, and consistent with the applicable regulations governing the award of the contracts. For contracts with a participation goal, awarding departments shall report awards and DVBE participation as proposed by the contractor ~~per~~ pursuant to section§ 1896.70, subdivision (g) or as documented by contract modification per section§ 1896.76. For contracts awarded without a participation goal, the awarding departments shall report each DVBE business represented in the contract.

(b) Awarding departments shall not count toward its DVBE participation goal funds expended on a DVBE during any period in which that ~~enterprise~~ DVBE is not in

compliance with the subdivision provisions of Military and Veterans Code section§ 999.2, subdivisions (c), (d) and (f), regarding required declarations.

(c) Contract funds awarded during any period in which a DVBE is not in compliance with Military and Veterans Code section§ 999.2, subdivision (g) with respect to furnishing required tax returns, cannot count toward DVBE participation goals.

(d) Awarding departments shall not count toward the DVBE participation goals any state funds expended with a business that is not DVBE certified at the time of award or does not meet and maintain the certification requirements in accordance with Military and Veterans Code sections§ 999.2, subdivision (g)(4) and 999.5, subdivision (c).

(e) Upon completion of an awarded contract for which a commitment to achieve a DVBE goal was made, state departments shall require the prime contractor who subcontracted with DVBEs, shall certify in writing to the awarding department to certify on the Prime Contractor's Certification – DVBE Subcontractor Report (STD 817) (Rev. 10/2021), incorporated by reference, all of the following in accordance with subdivisions (1) through (4) the Military and Veterans Code section§ 999.5:

(1) The total amount the prime contractor received under the contract.

(2) The name and address of each DVBE that participated in the performance of the contract and contract number.

(3) The amount and percentage of the work the prime contractor committed to provide to one or more DVBEs under the requirements of the contract and the amount each DVBE received from the prime contractor.

(4) That all payments under the contract have been made to the DVBEs. Upon request by the awarding department, the prime contractor shall provide proof of payment for the work.

~~(5) Awarding departments shall maintain the prime contractor written certifications on file in accordance with their records retention practices for contracts and provide annually to the OSDS, as the State Contracting Manual directs, subcontracting consolidation reports.~~

(f) State departments must establish appropriate review procedures for records related to the certification requirement to ensure the accuracy and completeness of the amounts awarded and paid. The maintenance of all records of the information provided by the prime contractor in compliance with Military and Veterans Code section 999.5 shall be retained for six years.

(g) State departments shall withhold, on a contract, ten thousand dollars (\$10,000) from the final payment, or the full final payment if less than ten thousand dollars (\$10,000), until the prime contractor complies with the certification requirements of subsection (e) of this section. A prime contractor that fails to comply with the certification requirement, shall, after notice, be allowed to ~~comply with the requirement~~ cure the defect.

Notwithstanding any other law, if, after at least fifteen (15) calendar days but no more than thirty (30) calendar days from the date of the state department's notice, the prime contractor refuses to comply with the certification requirements, the state department shall permanently deduct ten thousand dollars (\$10,000) from the final payment, or the full payment if less than ten thousand dollars (\$10,000) ~~dollars~~ in accordance with Military and Veterans Code section 999.7.

(h) State departments ~~will~~ shall review the State Contracting Manual for alternative mechanisms to enforce the certification requirement for contracts awarded for use by multiple state agencies ~~as set forth in Military and Veterans Code section 999.7.~~

Note: Authority cited: Sections 14600, 14839 and 14615.1, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 14615.1 and 14841, Government Code; Sections 999.2, and 999.5 and 999.55, Military and Veterans Code; Section 10111 and 10230, Public Contract Code; and Volume 2, Chapter 12 and Volume Fiscal, Chapter 9, State Contracting Manual.

Article 3. DVBE Certification

Section 1896.80. Application.

In order to be considered by OSDS for certification as a DVBE, a business must apply electronically via <https://caleprocure.ca.gov/pages/sbdvbe-index.aspx>, or Applicants that do not have access to a computer may submit to OSDS a completed hard copy of the Request for Small Business, Small Business for the Purpose of Public Works and/or & Disabled Veteran Business Enterprise Certification (Application) DGS PD 812 (Rev. 09/2019/11/4/2016), incorporated by reference, obtained at http://www.documents.dgs.ca.gov/dgs/fmc/gs/pd/pd_812.pdf. <http://www.documents.dgs.ca.gov/pd/smallbus/SBDVBE CertApp.pdf> to OSDS including The submission must include all of the required substantiating documentation and information that supports the business' eligibility at the time of application for DVBE certification under Section 999 of the Military and Veterans Code section 999.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 999 and 999.5, Military and Veterans Code.

Section 1896.81. Eligibility for DVBE Certification.

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

(1) DVs shall have at least a ~~ten~~ 10 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~~ 51 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 ~~the requirements of~~ Military and Veterans Code section § 999.2, subdivision (g).

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

- (1) It is a sole proprietorship with at least ~~51~~ 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 ~~51~~ 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 ~~which that~~ limit DV owner control.
- (3) It is a limited liability company (LLC) with a showing of one hundred percent (100%) ~~percent~~-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 ~~51~~ 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 ~~which 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 ~~51~~ 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 is ~~revocable, and~~ reflects the DV owner(s) have at least fifty-one percent (51%) ownership and the DV owner(s) is/are the sole grantor(s) and/or trustee(s).
- (7) ~~With the exception of LLC's which have to be 100 percent DV owned,~~ DV ownership as documented in an employee stock ownership plan is allowable only if non-DV employee ownership under the plan does not exceed ~~49~~ 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 ~~51~~ fifty-one percent (51%) of the entity's losses or profit; and

(B) The entire value of ownership shares;

~~(C) At least 51 percent of the retained earnings of the business.~~

(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 This right is included in the~~ 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) ~~100~~ one hundred percent (100%) of all voting stock of the business; or

2. DV(s) own(s) at least ~~51~~ 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 ~~51~~ 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, OSDS's determination of whether ~~dual-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 as a result of mechanical, chemical, or human action, it did not possess~~ 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 ~~50~~ 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 the state of California, 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 1896.82. Responsibilities of the DVBE Applicant.

For certification consideration, the DVBE applicant must comply with the following:

(a) ~~Demonstrate~~, In its with submission of the section § 1896.80 Request for Certification, demonstrate that the requirements for certification set forth in this subchapter and Article 6 (~~commencing with § 999~~) of Chapter 6, Division 4 of the California Military and Veterans Code (commencing with section 999), are ~~being~~ satisfied. Requests for Certification are considered pending until OSDS determines that

all eligibility requirements have been satisfied, and required documentation has been submitted and evaluated for sufficiency and completeness.

(b) In addition to the substantiating and supporting information requirements of section § 1896.80, applicants shall submit a copy of the United States Department of Veterans Affairs or United States Department of Defense documentation which proves the existence of a service-connected disability of at least ~~40~~ ten percent (10%).

(c) When bidding due dates apply, the certification request should be filed no later than the end of the bid due date, unless rules for the Small Business Procurement and Contract Act (California Code of Regulations, Title 2 CCR § 1896 et seq.) specify a different time, in which case the time for submission of the request for certification as so identified in that subchapter shall prevail.

(d) If the department determines just cause as identified in ~~subdivision (b)(2) of~~ Government Code section 14840 subdivision (b)(2), OSDS may require the certification applicant, owner of the disabled veteran business enterprise, or the certified firm, to complete and submit to OSDS an Internal Revenue Service Form 4506-T from the United States Treasury, requesting a transcript of their or its tax return.

(e) In reviewing a request for certification OSDS may:

(1) Consider information previously submitted, provided, or collected, including but not limited to the information provided by any applicant or any records gathered or held by any California state or local agency, any governmental agency of another state, or the federal government;

(2) Require additional documents and information that support or prove eligibility; ~~or;~~

(3) Require clarifications, additional documentation, corrections, or amendments, to the request for certification, including the supporting documentation submitted; or

(4) Accept a withdrawal of the certification request in writing when the DV or business does not meet eligibility requirements or is not able to provide supporting documentation to prove eligibility including proof of active status on licenses.

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

(g) ~~No Another's governmental-other~~ organization's DVBE certification cannot be accepted as the equivalent of OSDS certification, ~~due to differing standards.~~

(h) Applicants are expected to provide or have readily available all substantiating documentation and information to prove eligibility when submitting the request for certification. Certification requests that do not meet eligibility requirements will be denied in accordance with section 1896.83.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; and Sections 999 and 999.5, Military and Veterans Code. Reference: Sections 14839, 14839.1, 14840 and 14843, Government Code; and Sections 999.2 and 999.9, Military and Veterans Code.

Section 1896.83. Certification Denial.

DVBE Certification will be denied, ~~unless appealed in accordance with § 1896.95,~~ when:
(a) Applicants do not ~~clearly~~ meet the eligibility requirements for certification, or do not respond to requests from OSDs for additional information within the thirty (30) calendar days specified in a written notice from OSDs. Additional information includes but is not limited to the following:

(1) Federal income tax returns as required by section 1896.81 and Military and Veterans Code section 999.2, subdivision (g).

(2) Demonstration of the required DV ownership and/or control level of fifty-one percent (51%), or one hundred percent (100%) in the case of LLCs.

(3) Demonstration of active status with the California Secretary of State and the Contractor's License Board, when legally required to do so.

(4) Documentation showing all current licenses, permits, insurance coverage and registrations integral to conducting business lawfully which may include but not limited to those issued by any ~~California~~ state or local government.

(5) Documentation showing the applicant's statutory domicile in California or service-connected disability on the part of qualifying DVs.

(b) The request for certification and supporting documents, in spite of information corrections and/or clarifications, may still not substantiate that eligibility requirements have been met.

(c) Any request for certification is submitted by one or more principals of a business (new or existing) formed, financed by, or affiliated with a business that has been suspended from contracting with the state of California, or whose certification has been revoked.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 14839, 14840 and 14843, Government Code; and Sections 999.2 and 999.9, Military and Veterans Code.

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 twenty four (24) months.

(2) ~~Dual~~ Multiple certifications, valid for twenty four (24) months. ~~Dual~~ Multiple certifications means DVBEs also have small business and small business for the purpose of public works certifications. Refer to ~~2-CCR sections~~ § 1896.4, subdivision (ut) 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) ~~Dual~~ Multiple certifications, with microbusiness and small business for the purpose of public works designations, valid for twenty four (24) months. Refer to ~~2-CCR section~~ § 1896.4, subdivision (pe) of Title 2, California Code of Regulations (CCR), for the definition of a microbusiness designation.

(4) OSDS, at its discretion, may issue short-term or ~~extended~~ certifications, for up to twenty four (24) months on a case-by-case basis up to 12 months 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.

[No change to subsection (c).]

(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, ~~in either electronically~~ or on paper, may not be submitted earlier than ninety (90) calendar days before certifications expire.

(2) Unless otherwise instructed by OSDS, ~~the~~ recertification requests must contain updated information and/or replacement of obsolete content ~~in order~~ 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.

[No change to subsection (f).]

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

[No change to paragraph (g)(1).]

(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.

[No change to paragraph (g)(3).]

(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, except 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.

[No change to subsections (h) and (i).]

(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.

Section 1896.85. Certification Discontinuance.

(a) Certification may, for the purposes of this subchapter and Subchapter 3, Chapter 3, Division 2 of this Title, be discontinued ~~for~~ upon evidence which OSDS reasonably determines that DVBEs no longer meet the eligibility requirements of this subchapter. Certification may also be discontinued if a DVBE fails to do any of the following reasons, including but not limited to, a failure to:

- (1) Provide requested information that supports its continued eligibility as a certified DVBE by the date and time specified by OSDS,
- (2) Notify OSDS and the awarding department, in accordance with the provisions of Military and Veterans Code section § 999.2, subdivision (h) of the Military and Veterans Code, that the requirements for certification have not been maintained,
- (3) Submit federal income returns as required by this subchapter and Military and Veterans Code section § 999.2, subdivision (g) of the Military and Veterans Code,
- (4) Maintain the required DV ownership and/or control level of ~~51~~ fifty-one percent (51%), or ~~100~~ one hundred percent (100%) in the case of LLCs Limited Liability Companies,
- (5) Maintain active status with the California Secretary of State, when legally required to do so,
- (6) Maintain all licenses, permits, insurance coverage and registrations integral to conducting business lawfully, including but not limited, to those issued by any California state department or local government, or
- (7) Conform to the statutory domicile in California or service-connected disability requirements on the part of qualifying DVs, ~~or~~
- ~~(8) Upon evidence which would reasonably lead OSDS to determine that DVBEs no longer meet the eligibility requirements of this subchapter.~~

(b) ~~Restoration of~~ After Discontinuance applies when, or for so long as:

- ~~(1) Any of the (a)(1) through (8) subdivisions apply during certification, or~~
- ~~(2) Until satisfactory action on the part of the certified entity corrects applicable and specifically identified insufficiencies, whereupon c~~ ertified status shall be restored for the remaining period of certification when the certified entity corrects applicable and specifically identified insufficiencies.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code, and Section 999.5, Military and Veterans Code. Reference: Sections 14839 and 14840, Government Code; and Sections 999 and 999.2, Military and Veterans Code.

Section 1896.88. Unlawful Certification and Contracting Activities.

(a) In accordance with the provisions of Military and Veterans Code section§ 999.9, subdivision (a) ~~subdivision paragraphs~~ (1) through (3), it shall be unlawful for a person to:

- (1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining DVBE certification.
- (2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit or report, to a state official to influence a certification decision.
- (3) Willfully and knowingly obstruct, impede, or attempt to obstruct any state employee investigating the qualifications of an applicant requesting certification or of a certified business.

(b) In accordance with the provisions of Military and Veterans Code section§ 999.9, subdivision (a) ~~subdivision paragraphs~~ (4) through (10), it shall be unlawful for a person to:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another in fraudulently obtaining or attempting to obtain public monies, contracts or funds that are awarded by the state, to which a person is not entitled.
- (2) Knowingly and with intent to defraud, fraudulently represent DVBE participation in order to obtain or retain a bid preference or a state contract.
- (3) Knowingly and with intent to defraud, fraudulently represent a CUF in order to obtain or retain a bid preference or a state contract.
- (4) Willfully and knowingly make or subscribe to any false statements or declarations as to any material matter relevant to this subchapter.
- (5) Willfully and knowingly aid in the preparation or presentation of declarations, statements, or other documents that are fraudulent or false, regardless of whether or not the falsity is committed with the knowledge or consent of those authorized or required to submit the declaration, statement or document in question.
- (6) Willfully and knowingly fail to file with the awarding agency any declaration or notice required by Military and Veterans Code section§ 999.2.
- (7) Establish, or knowingly aid in the establishment of, or exercise control over, a firm found to have violated any of the requirements of Military and Veterans Code section§ 999.9, subdivisions (a) ~~subdivision paragraphs~~ (1) through (10).

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Section 14840, Government Code; ~~and Sections 999.2 and 999.9, Military and Veterans Code;~~ and Section 10230, Public Contract Code.

Article 4. Enforcement and Sanctions

Section 1896.90. Enforcement.

The OSDS shall be responsible for actions against businesses for the enforcement of Military and Veterans Code sections§§ 999, et seq., Public Contract Code sections§§ 10115, et seq., and Government Code sections§§ 14842 and 14842.5. The actions are certification denial, discontinuance or revocation and suspension from contracting with the state as well as, the imposition of monetary penalties and/or cost recovery to the state, imposed in accordance with subdivisions (b), (c) or (d) for violation of subdivision (a) Military and Veterans Code section§ 999.9.

(a) Certification Denial or Revocation: When a business does not meet the requirement for certification, or no longer meets eligibility requirements, because of a violation of subdivision (a) of Military and Veterans Code section§ 999.9 or Government Code sections 14842, subdivision (a) or 14842.5, subdivision (a), all certifications shall be denied or revoked. When denying or revoking a certification, the OSDS shall provide written notice including the reasons for the denial or revocation and ~~also provide~~ information regarding the appeal process.

(b) Suspension: Any business may be suspended from state contracting activities. Suspension means a temporary debarment from bidding on or participating as a contractor, subcontractor or supplier in any state contract or project, and includes ~~a~~the revocation of certification unless the suspended business is not certified. When suspending a certified business from contracting activities, the OSDS shall revoke certification with a written notice. The notice shall include affected businesses owned by, affiliated with, financed, or formed by the principals named in the suspension, include the reasons for suspension and provide notice of the appeal process. ~~Any a~~Allegations with sufficient grounds may be referred to the Attorney General for possible prosecution and imposition of civil/criminal sanctions for violations of ~~the~~ Military and Veterans Code section§ 999.9, subdivision (a). OSDS may pursue administrative action and penalties irrespective of whether the Attorney General chooses to bring action.

Note: Authority cited: Sections 14600, 14615 and 14843, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 12651, 14837, 14840, 14842 and 14842.5, Government Code; Section 999.9, Military and Veterans Code; and Sections 10115, ~~and 10115.10,~~ and 10230, Public Contract Code.

Section 1896.91. Investigations and Reporting Requirements.

Nothing in these regulations shall be construed to impair the right of either the administering agency or the awarding department to initiate investigations pursuant to Government Code sections§§ 14842 or 14842.5, sections§§ 999, et seq. of the Military and Veterans Code, and Public Contract Code sections§§ 10115, et seq.

(a) The awarding department shall report allegations of prohibited acts or activities or alleged violations of Military and Veterans Code sections§§ 999, et seq. or Public Contract Code sections§§ 10115 et seq. directly to the OSDS.

Modified Text – CCR, Title 2, §§ 1896 – 1896.26; 1896.60 – 1896.97; 1896.99.100 – 1896.99.120

Allegations of such violations received directly by OSDS from any other source are redirected to the awarding department by OSDS. In addition, with respect to such allegations, redirection by OSDS to the awarding department may be required in any other cases for the purpose of gathering and assembling documentation and obtaining supporting evidence.

(b) ~~An accompanying written report, supporting evidence, and recommended action commensurate with~~ the awarding department's findings shall be submitted ~~in its entirety~~ to the OSDS within sixty (60) business days of notification or discovery of the alleged violation a written investigative report, with findings, supporting evidence, and recommended actions.

(c) Upon receiving a written request for additional time by the awarding department, OSDS may extend the subdivision (b) deadline for good cause. ~~Nonetheless,~~ OSDS will acknowledge receipt of the awarding department's investigative report within three (3) business days.

Note: Authority cited: Sections 14600, 14615 and 14843, Government Code; Sections 999 and 999.5, Military and Veterans Code. Reference: Sections 999.5, 999.55 and 999.9, Military and Veterans Code; and Sections 10115.3, 10115.10, 10230 and 10295, Public Contract Code.

Section 1896.92. Sanctions.

The OSDS shall recommend, impose, and enforce sanctions in accordance with the applicable provisions of the Small Business Procurement and Contract Act (~~Government Gov.~~ Code §§ 14835 et seq.), and the Disabled Veterans Business Enterprise Program (~~Military and Veterans Code MVC~~ §§ 999 et seq.). The sanctions shall apply to the business, and all principals, and business affiliates, and any person who violates the aforementioned laws.

Note: Authority cited: Sections 14600, 14615, 14839 and 14843, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 12651, 14837, 14839, 14842, 14842.5 and 14843, Government Code; Sections 999, 999.5, 999.9 and 999.10, Military and Veterans Code; and Sections 10115, ~~and~~ 10115.15, and 10230, Public Contract Code.

Article 5. Appeal Process

Section 1896.95. Appeal of Certification Denial or Revocation, and/or Suspension from Contracting Activities.

Decisions to deny or revoke certifications, or to impose monetary penalties, sanctions, or suspensions from contracting activities may be appealed. Upon receipt of an appeal, OSDS will determine jurisdiction. An appeal must present arguments for concluding that the decision was in error.

(a) Denials, revocations, monetary penalties and suspensions or other sanctions shall become final unless an appeal is received within thirty (30) calendar days from the date

of the notice. ~~The Director or designee~~ For good cause, OSDS may grant additional time for appeal submission when extenuating circumstances apply. Appeals are not available to denials for nonresponse to requests for additional information, as set forth in subdivision (e).

[No change to subsection (b).]

(c) Grounds for appeal shall be:

[No change to paragraphs (c)(1) and (2).]

(3) Sanctions should not be imposed, because one or more of the conditions set forth in Military and Veterans Code section 999.9, subdivisions (a), (c) or (d) or Government Code sections §§ 14840, 14842, 14842.5, as applicable, did not exist to warrant the action.

[No change to subdivision (d).]

(e) There are no grounds for appeal in any of the following situations:

- (1) Frivolous appeal.
- (2) Failure to timely appeal a decision.
- (3) Failure to submit complete information by the specified date of a written request.
- (4) Submission of new information after the decision.

(f) The DGS Director or designee shall dismiss appeals based on section § 1896.95, subdivision (e) and notify the DVBE. The decision shall be final.

(g) The OSDS shall forward appeals that are not rejected to the Office of Administrative Hearings.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; Section 999.5, Military and Veterans Code. Reference: Sections 12651, 14842 and 14842.5, Government Code; Sections 999.5 and 999.9, Military and Veterans Code; and Sections 10115.15 and 10230, Public Contract Code.

Section 1896.96. Appeal Hearings.

Appeal hearings shall be conducted in accordance with the Administrative Procedure Act, Chapter 5, Part 1 of Division 3, Title 2, Government Code, commencing with section § 11500. The ALJ has sole discretion as to whether to conduct a hearing, or proceed with a decision based solely on the written submission. If a hearing is held, the ALJ shall have discretion to limit the number of witnesses and the time allocated to each, and authority to permit or limit cross-examination. There shall be no right to take depositions, issue interrogatories, and accept submission of non-party Amicus Briefs or subpoena persons or documents.

Note: Authority cited: Sections 14600, 14615 and 14837, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 6250, 11500, 11501, 11502, 11503, 11504, 11504.5, 11505, 11506, 11507, 11507.3, 11507.5, 11507.6, 11507.7, 11508, 11509, 11511.5, 11511.7, 11512, 11513, 11514, 11515, 11516, 11517, 11518, 11518.5, 11519, 11520, 11521, 11523, 11524, 11526, 11527, 11528 and 14839, Government Code.

Section 1896.97. Appeal Decisions.

The ALJ shall uphold or deny the appeal, and may impose sanctions, in accordance with Military and Veterans Code section 999.9, subdivisions (b), (c) and (d). If the Attorney General imposes fines and additional sanctions, the OSDS shall continue suspensions until all penalties, costs, and attorney fees are satisfied pursuant to Military and Veterans Code section 999.9, subdivision (c)(3). ~~Unless specified in the ALJ order, the ALJ's decision within five (5) days from the date of service to OSDS.~~

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Sections 115197, 14839 and 14842, Government Code; and Section 999.9, Military and Veterans Code.

Subchapter 10.6. DVBE Incentive Program

Section 1896.99.100. Incentive Application.

(a) Whenever an awarding department applies the DVBE program requirement, it shall offer the DVBE incentive as outlined in this subchapter for DVBE participation. The incentive may also be offered when other competitive solicitations take place. The highest ranking executive officer or ~~his/her~~ designee may exempt individual contracts from the DVBE incentive with a full and complete written justification as long as such exemption does not prevent achievement of a department's DVBE participation goal.

[No change to subsections (b) through (d).]

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Section 14838, Government Code; ~~and Sections 999.5, 999.55 and 999.7, Military and Veterans Code; and Section 10230, Public Contract Code.~~

Section 1896.99.120. Incentive Amount.

(a) For award based on low price, the minimum incentive is ~~4~~ one percent (1%) with or without a cap. Use of a higher incentive percentage not to exceed ~~5~~ five percent (5%) is allowed for a solicitation based upon the need to meet participation goals. For each solicitation, awarding departments' ~~Director or~~ highest ranking executive or designee may elect to place a cap of not less than one-hundred thousand dollars (\$100,000) on the incentive and/or a cap of not less than one-hundred thousand dollars (\$100,000) for all combined incentives and preferences.

(b) For award based on high score, the incentive shall be no less than one percent (1%) but not exceed 5 five percent (5%); nor be less than 1 percent of total possible available points. The incentive does not including include points for socioeconomic incentives or preferences.

Note: Authority cited: Sections 14600, 14615 and 14839, Government Code; and Section 999.5, Military and Veterans Code. Reference: Section 14838, Government Code; ~~and Sections 999.5, 999.55 and 999.7, Military and Veterans Code; and Section 10230, Public Contract Code.~~