



## DVBE Program Regulations

The Office of Small Business and DVBE Certification (OSDC) is providing these regulations as a convenience, and recipients are responsible for knowing and following the regulations, as they may be amended from time to time. The current California Code of Regulations can be found on the Internet at <http://ccr.oal.ca.gov/>. History and Notes for each section are available on the website. Sections that were repealed or renumbered are listed at the end of this document.

**Title 2. Administration**  
**Division 2. Financial Operations**  
**Chapter 3. Department of General Services**  
**Subchapter 10.5. DVBE Participation**  
**Sections 1896.60 – 1896.95**

**§1896.60. 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 Section 10115) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code that concerns Disabled Veteran Business Enterprises or DVBEs and these regulations.

**§1896.61. Definitions.**

As used in these regulations:

- (a) For the purposes of the DVBE participation program as related to contracts, the term “administering agency” means the Office of Small and Minority Business within the Department of General Services.
- (b) The term “awarding department” shall have the meaning set forth in Section 10115.1(a) of the Public Contract Code.
- (c) The term “bidder” means any person or entity, persons, firm, sole proprietorship, partnership, corporation, DVBE combination, or joint venture thereof making an offer, a proposal, or submitting a response to a solicitation competitively or non-competitively, for the purpose of securing a contract with an awarding department.
- (d) The term “considered” as used in Section 10115.2(b)(5) of the Public Contract Code means that the bidder made a bona fide effort to carry out all actions with regard to DVBEs specified in Section 10115.2(b)(1-5) (except Section 10115.2(b)(3) of the Public Contract Code when the awarding department has waived the advertising requirements of Section 10115.2(b)(3) of the Public Contract Code in the solicitation), and reviewed DVBE responses and carefully evaluated and documented the reasons for not selecting such potential subcontractors. The bidder must consider all responding subcontractors for a specified service based upon the same information and evaluation criteria.
- (e) The term “contract” means any agreement as defined by Section 10115.1(b) of the Public Contract Code. It does not include agreements such as those executed pursuant to Chapter 6 (commencing with Section 16850)

of Part 3 of Division 4 of Title 2 of the Government Code; subvention aid or local assistance contracts including those contracts providing assistance to local governments and aid to the public directly or through an intermediary, such as a non-profit corporation organized for that purpose; agreements with other governmental entities; and agreements with sheltered workshops (as described in Welfare and Institutions Code Section 19404, et seq.).

(f) The term “control” as applied to “ownership (or management) and control” of DVBE means the DVBE owner(s) and/or DVBE manager(s) must demonstrate expertise specifically in the firm's field of operation in controlling the overall destiny and the day-to-day operations of the firm. Office management, clerical, or other experience unrelated to the firm's field of operations is insufficient to establish control. This control is comprised of two parts -- Managerial and Operational.

(1) To have managerial control, the DVBE owner(s) and/or DVBE manager(s) must demonstrate responsibility for the critical areas of the firm's operations. The DVBE owner(s) and/or DVBE manager(s) must be personally responsible for at least one of the following:

(A) Negotiations, execution and signature of contracts; or

(B) Execution (signature) of financial (credit, banking, bonding) transactions and agreements.

(2) To have operational control, the DVBE owner(s) and/or DVBE manager(s) must demonstrate that he/she independently makes basic decisions in daily operations. Absentee or titular ownership by the DVBE owner(s) and/or DVBE manager(s) must include an active role in controlling the business. Control may be demonstrated in various ways such as:

(A) DVBE owner(s) and/or DVBE manager(s) have the ability to appoint or elect and to remove the majority of the Board of Directors;

(B) No formal or informal restrictions exist to limit voting power or control of the DVBE owner(s) and/or DVBE manager(s);

(C) No third party agreements restrict control by DVBE owner(s) and/or DVBE manager(s);

(D) DVBE owner(s) and/or DVBE manager(s) possess the requisite experience, education, knowledge and qualifications in the firm's field of operations;

(E) Salary/profits of DVBE owner(s) and/or DVBE manager(s) are commensurate with their ownership interest;

(F) DVBE owner(s) receive at least 51% of any dividends paid by the firm including distribution upon liquidation; and

(G) DVBE owner(s) are entitled to 100% of the value of each share of stock they hold if sold.

(H) DVBE owner(s) and/or DVBE manager(s) control the operation of the firm in the following areas:

1. Financial

2. Bonding

3. Supervision - direct responsibility for subordinates

4. Work force - direct responsibility for subordinates or subcontractors

5. Equipment

6. Materials

7. Facilities (office/yard)

(g) The term “Department” or “DGS” means the Department of General Services.

(h) The term “disabled veteran” means a veteran of the military, naval or air service of the United States with a service-connected disability who is a resident of the State of California.

(i) The term “disabled veteran business enterprise” or “DVBE” means a business concern that the Office of Small and Minority Business has certified as a DVBE.

(j) The term “joint venture” or “DVBE combination” means two or more parties who join together for a common business enterprise in which profits, losses and control are shared. The agreement between the parties must be set forth in writing.

(k) The term “Disabled Veteran Business Enterprise (DVBE) Focus and Trade Paper” means a publication that meets all of the criteria of [Sections 1896.61](#)(m) and (q).

(l) The term “DVBE contractor, subcontractor or supplier” means any person or entity that satisfies the ownership (or management) and control requirements of [Section 1896.61](#)(f); is certified in accordance with [Section 1896.70](#); and provides services or goods that contribute to the fulfillment of the contract requirements by performing a commercially useful function. A DVBE contractor, subcontractor or supplier is considered performing a commercially useful function when it meets the following criteria:

(1) The business concern is: responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing or supervising the work involved; and performing work that is normal for its business services and functions, and

(2) The business concern is not further subcontracting a greater portion of the work than would be expected by normal industry practices.

(m) The term “papers focusing on disabled veteran business enterprises” used in Section 10115.2(b)(3) of the Public Contract Code or focus papers means any publication that meets all of the following criteria:

(1) has an orientation relating to disabled veteran business enterprise(s);

(2) is known and used by members of the disabled veteran business enterprise community;

(3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at disabled veteran business enterprises; and

(4) is available within the geographic area for which the advertisement is placed and for which the services are to be performed.

(n) The term “participation goal” or “goal” means a numerically expressed DVBE objective that bidders are required to make efforts to achieve in accordance with Section 10115(c) of the Public Contract Code.

(o) The term “solicitation” means an announcement to bidders describing a specific purchase or contracting opportunity and its requirements, and which invites bidders to submit offers in response thereto. Such announcements may include, but are not limited to: Invitations for Bid (IFB), Requests for Proposals (RFP), Requests for Qualifications or Request for Quotation (RFQ), or Price Requests.

(p) The term “Statutory Disability” as it is used in this Subchapter means a service-connected disability enumerated under Title 38, United States Code, Section 1114.

(q) The term “trade paper” used in Section 10115.2(b)(3) of the Public Contract Code means a publication that meets all of the following criteria:

- (1) has a business orientation relating to the trade or industry for which the advertisement is being placed;
- (2) is known and used by members of that trade or industry;
- (3) primarily offers articles, editorials (if any), and advertisements of business opportunities aimed at that trade or industry; and,
- (4) is available within the geographic area for which the advertisement is placed and for which the services are to be performed.

(r) The term “veteran with a service-connected disability” means the United States Department of Veterans Affairs or United States Department of Defense has declared that the veteran is currently 10 percent or more disabled as a result of service in the armed forces.

#### **§1896.62. Disabled Veteran Business Enterprise (DVBE) Participation Goals.**

(a) The disabled veteran business enterprise participation program goal established in Public Contract Code Section 10115(c) applies to the overall annual expenditures of the awarding department for contracts as defined by [Section 1896.61](#)(e), Subchapter 10.5, Title 2 of the California Code of Regulations.

(b) The director of the awarding department may establish a participation goal either less than or in excess of the statutory goal of 3 percent DVBE(s) for a specific solicitation, project or contract as long as the overall goal of 3 percent DVBE(s) is satisfied as defined by Section 10115(c) of the Public Contract Code.

(c) To qualify as a responsive bidder for contracts awarded as the result of a solicitation process when DVBE participation goal is specified, in addition to meeting all other technical and/or administrative requirements specified in the solicitation, a bidder must document in the bidder's response to the solicitation, at or prior to the time of bid opening, that the bidder made a commitment to fulfill the participation goal, or made a good faith effort to meet the participation goal.

(d) Except as may be changed by [Section 1896.62](#)(b), the requirement for satisfying the participation goal shall be deemed to have been met if a bidder:

- (1) Is a disabled veteran business enterprise and is committed to perform not less than 3 percent of the dollar amount of the bid with its own forces, or in combination with those of other disabled veteran business enterprises; or
- (2) Is a non-DVBE and is committed to use DVBE(s) for not less than 3 percent of the dollar amount of the bid response.

(e) The awarding department shall find that the DVBE combination or joint venture has met the requirements for the participation goal providing the DVBE combination or joint venture satisfies all of the following conditions:

- (1) A bidder uses the DVBE status of the bidder's joint venture partner(s) to meet the participation goal; and
- (2) Each DVBE joint venture partner used to satisfy the participation goal also satisfies the 51% ownership and/or control requirements for status as a DVBE as an independent enterprise outside the joint venture; and
- (3) Each DVBE joint venture partner is responsible for a clearly defined portion of the work, identified both as a task and as a percentage share/dollar amount of the overall project/response to the solicitation. The goal attainment claimed in the response to the solicitation cannot exceed the percentage share of the work to be performed by each DVBE partner as claimed in the joint venture agreement.
- (4) If the DVBE combination or joint venture bidder/contractor is unable to satisfy the goal of 3 percent DVBE, using any one of its joint venture partners, the DVBE combination or joint venture bidder/contractor will satisfy the goal as prescribed in [Section 1896.62\(d\)](#). If unable to satisfy the goal the DVBE combination or joint venture bidder/contractor will conduct a good faith effort as prescribed in [Section 1896.63](#).

(f) The bidder's authorized representative shall

- (1) list the name of each DVBE firm proposed for use in the performance of the contract;
- (2) list the percentage share/dollar amount of the overall contract to be performed by each DVBE; and
- (3) describe the task to be performed by such DVBE.

#### **§1896.63. Good Faith Effort.**

(a) Bidders must satisfy the good faith effort requirement (unless goal is met) at the time of bid opening.

(b) If the participation goal is not met, the bidder shall comply with the requirements of Section 10115.2(b)(1) through (5) including (3) unless the advertising requirements of that subsection are waived by the awarding department. The awarding department shall require documentation of that compliance in the solicitation document. The bidder shall submit documentation of that compliance with the bid.

(c) The awarding department shall evaluate the effort made by the bidder to seek out and consider disabled veteran business enterprises as potential subcontractors for services, materials, labor, supplies or equipment.

In evaluating such effort, the awarding department shall require written evidence that the bidder completed the actions specified in Public Contract Code Section 10115.2(b)(1), (2), (4), and (5). Unless the awarding department waived the advertising requirement, the written evidence must also include advertising as specified in Section 10115.2(b)(3).

Based on this evaluation, the awarding department, in its sole discretion, may find that the bidder has met the good faith effort requirement.

(d) Unless it waives the good faith effort advertising requirements of Section 10115.2(b)(3) of the Public Contract Code, the awarding department shall require that:

(1) Bidders must advertise in trade papers disabled veteran business enterprise focus papers, as specified in the solicitation. Trade papers and disabled veteran business enterprise focus papers as defined in [Section 1896.61](#) must be acceptable to the awarding department.

(2) Unless otherwise specified in the solicitation document, bidders must publish advertisements in trade and focus publications at least 14 calendar days prior to the due date of the response to the solicitation. (Awarding departments may waive the advertising requirement or establish a period of less than 14 calendar days if time limits do not permit a 14 day advertising period.)

(3) Solicitation documents must contain one of the following:

(A) The Office of Small and Minority Business (OSMB) Resource Packet for trade and focus publications; or

(B) A list of trade and focus publications specific to the business of the awarding department; or

(C) The following paragraph:

In accordance with Public Contract Code Section 10115.2(b)(3), bidders must advertise in trade and focus publications unless the DVBE goal is satisfied. The Office of Small and Minority Business (OSMB) publishes a list of trade and focus publications to assist bidders in meeting these contract requirements. To obtain this list, please contact the OSMB and request the “Resource Packet”. The OSMB may be contacted at:

(Awarding Department to list current address and telephone number of OSMB.)

#### **§1896.64. Contract Awards.**

(a) If a bidder fails to meet the “good faith effort” requirement of [Section 1896.63](#), such bidder shall be deemed not to be a responsive bidder for purposes of an awarding department's evaluation of an award of contract and is thus ineligible for an award. No provision of these regulations, however, shall be deemed to require the awarding department to make an award.

(b) With respect to invitations for bid for the purchase of supplies or equipment pursuant to the provisions of Article 3 of Chapter 2 of Part 2 of Division 2 of the Public Contract Code (commencing with Section 10301) or the acquisition of goods and services pursuant to the provision of Chapter 3 of Part 2 of Division 2 of the Public Contract Code (commencing with Section 12100) where the awarding department has reserved the right to make multiple awards or a single contract award, a bidder shall be deemed responsive regarding the requirement for the making of a good faith effort if there would be compliance with the provisions of [Section 1896.63](#) based on award for a single contract, notwithstanding such bidder may be unable to achieve compliance to meet the established goal if the awarding department exercises the right to make multiple awards.

(c) Substitution of a DVBE

(1) After award of a contract, the successful bidder/contractor must use the DVBE subcontractor(s) and/or supplier(s) proposed in the solicitation response to the State per [Section 1896.62](#) unless a substitution is requested. The bidder/contractor must request the substitution in writing to the awarding department and the awarding department must have approved the substitution in writing. At a minimum the substitution request must include:

(A) A written explanation of the reason for the substitution; and if applicable, the contractor must also include the reason a non-DVBE subcontractor is proposed for use.

(B) A written description of the business enterprise to be substituted, including its business status as a sole proprietorship, partnership, corporation or other entity, and the DVBE certification status of the firm, if any.

(C) A written notice detailing a clearly defined portion of the work identified both as a task and as a percentage share/dollar amount of the overall contract that the substituted firm will perform.

(2) The request for substitution of the DVBE subcontractor/supplier must be approved in writing by the awarding department prior to commencement of any work by the subcontractor/supplier.

(3) The request for substitution of a DVBE and the awarding department's approval or disapproval cannot be used as an excuse for noncompliance with any other provision of law, including, but not limited to, the Subletting and Subcontracting Fair Practices Act (Sections 4100 et seq., Public Contract Code) or any other contract requirements relating to substitution of subcontractors.

(d) Approval by Awarding Department of Contractor's Request for DVBE Substitution

If a contractor requests substitution of its DVBE subcontractor(s)/supplier(s) by providing a written request to the awarding department in accordance with [Section 1896.64\(c\)](#), the awarding department may consent to the substitution of another person as a subcontractor in any of the following situations:

(1) When the subcontractor listed in the bid after having had a reasonable opportunity to do so fails or refuses to execute a written contract, when that written contract based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the subcontractor by the prime contractor.

(2) When the listed subcontractor becomes bankrupt or insolvent, or goes out of business.

(3) When the listed subcontractor fails or refuses to perform his or her subcontract.

(4) When the listed subcontractor fails or refuses to meet the bond requirements of the prime contractor.

(5) When the prime contractor demonstrated to the awarding department, or its duly authorized officer, that the name of the subcontractor was listed as the result of an inadvertent clerical error.

(6) When the listed subcontractor is not licensed pursuant to any applicable licensing requirement of any regulatory agency of the State of California.

(7) When the awarding department, or its duly authorized officer, determines that the work performed by the listed subcontractor is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the subcontractor is substantially delaying or disrupting the process of the work.

Prior to approval of the prime contractor's request for the substitution, the awarding department, or its duly authorized officer, shall give notice in writing to the listed subcontractor of the prime contractor's request to substitute and of the reasons for the request. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor who has been so notified shall have five working days within which to submit written objections to the substitution to the awarding authority. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution.

If written objections are filed, the awarding authority shall give notice in writing of at least five working days to the listed subcontractor of a hearing by the awarding department on the prime contractor's request for substitution.

### **§1896.70. DVBE Certification.**

In order to obtain DVBE certification under this Subchapter, a business concern must do all of the following:

- (a) Meet DVBE requirements set forth in this Subchapter and Article 6 (commencing with Section 999) of Chapter 6, Division 4 of the California Military and Veterans Code; and
- (b) Provide the following documentation to the Office of Small and Minority Business, no later than five o'clock p.m. (5:00 p.m.) of the bid opening day, unless the regulations ([Section 1896 et seq., Title 2, California Code of Regulations](#)) implementing the Small Business Procurement and Contract Act (SBPCA) specify a different time, in which case the submission time for application as identified in the SBPCA shall prevail:
  - (1) A completed Small Business and/or Disabled Veteran Business Enterprise Certification Application, STD. 812 (as required by [Section 1896.95\(b\)](#)) which is made a part of this regulation; and
  - (2) A copy of an Award of Entitlement letter from the United States Department of Veterans Affairs or United States Department of Defense which was issued within six (6) months of the date a new certification is sought and which certifies or declares the existence of a service-connected disability of at least 10 percent. In the case of renewal of a DVBE certification, the applicant(s) shall certify in writing that there has been no change in the status of applicant's service-connected disability. In the event that an applicant is seeking certification on the basis of a service-connected Statutory Disability, subsequent renewal of the certification will require that the applicant certify in writing that there has been no change in the status of the service-connected disability.
- (c) In reviewing an applicant for, or the validity of a DVBE certification, the Office of Small and Minority Business may require the DVBE applicant to submit additional documents and information that support eligibility to be a certified DVBE.

### **§1896.75. Contract Audits.**

When an awarding department awards a contract subject to participation goals or good faith effort in accordance with Public Contract Code Section 10115.2, it shall include a provision which in substance provides the following:

Contractor or vendor agrees that the awarding department or its delegatee will have the right to review, obtain, and copy all records pertaining to performance of the contract. Contractor or vendor agrees to provide the awarding department or its delegatee with any relevant information requested and shall permit the awarding department or its delegatee 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 for the purpose of determining compliance with Public Contract Code Section 10115 et seq. and [Title 2, California Code of Regulations, Section 1896.60 et seq.](#) Contractor or vendor further agrees to maintain such records for a period of three (3) years after final payment under the contract.

### **§1896.80. Adjudicatory and Investigatory Procedures.**

Nothing in these regulations shall be construed to impair the right of the awarding department or the Department to initiate adjudicatory or investigatory procedures available for the purpose of ensuring compliance with the requirements of Public Contract Code Section 10115, et seq. and Section 999 et seq. of the Military and Veterans Code and attendant rules and regulations.

Prior to reporting an alleged violation of Public Contract Code Section 10115.10 to the DGS, Office of Small and Minority Business, awarding departments shall investigate the alleged violation and shall prepare a written

report of their findings. The written report shall also include a recommendation for action to be taken commensurate with the awarding department's findings and shall be submitted to the Office of Small and Minority Business within 60 working days of the notification to the awarding department of the alleged violation.

**§1896.85. Appeal of Determination – DVBE.**

(a) All decertifications or denials of certification for DVBE status by the Office of Small and Minority Business shall become final unless the DVBE applicant appeals the determination within 30 calendar days of the date of receipt. If the DVBE applicant believes that the determination will result in the wrongful denial of certification by the Office of Small and Minority Business, the DVBE applicant shall mail, hand-deliver, or transmit a facsimile of a signed and dated appeal in writing to the Director of the DGS. Upon receipt of a written appeal from the DVBE applicant which specifies the reasons for good cause, the Director of the DGS may extend the time for the delivery of the appeal in the interest of justice. The Director may accept an untimely appeal upon a showing of good cause.

(b) When the DGS receives a timely DVBE appeal submitted as prescribed by [Section 1896.85\(a\)](#) of these regulations, a hearing officer appointed by the Director shall resolve the appeal based on written materials or an administrative hearing as determined by the hearing officer. Where the appeal is based upon the decertification of a currently certified DVBE, a hearing officer shall resolve the appeal by an administrative hearing.

(c) In the event of an administrative hearing, a hearing officer for the Department shall set the date, time and location for the hearing and shall notify all interested parties as determined by the hearing officer, at least five (5) calendar days in advance of the hearing. The hearing officer may, upon reasonable notice to interested parties, change the date of, postpone or continue the hearing at the request of an interested party upon showing of good cause or upon its own motion. The location of the hearing shall be at the discretion of the hearing officer and shall be situated for the convenience of all parties.

(d) If the hearing officer is going to determine the appeal through written submissions, the hearing officer shall notify all interested parties. Each of the interested parties notified by the hearing officer may submit a written argument which supports its position. The written argument shall be submitted by the deadline established by the hearing officer.

(e) In the event the hearing officer determines that an appeal is to be determined through written submissions, the hearing officer shall base his/her decision upon the hearing officer's evaluation that oral or additional testimony would be unnecessary for a full understanding of the issues.

(f) Interested parties must submit an original and two copies of any written material to the DGS together with proof of service of a copy to each interested party.

(g) At any time the DGS finds that an appeal is clearly insufficient on its face, entirely without merit, or outside the jurisdiction of the DGS, the hearing officer may dismiss the appeal forthwith.

(h) The powers and responsibilities of the hearing officer, the period allowed for rendering a decision and the form of notice shall be the same as those established by [Title 2, Subchapter 1.5, Sections 1195.4, 1195.5 and 1195.6](#) respectively, of the California Code of Regulations.

### **§1896.90. Reporting Participation Goals.**

Data reported by the awarding department as required by Section 10115.5 of the Public Contract Code must be consistent with the regulations governing the awards of the contracts. For contracts with a participation goal, the awards must be reported as claimed by the contractor per [Section 1896.62\(f\)](#). For contracts awarded without a participation goal, the awarding department may report each eligible firm represented in the contract. If it is unknown whether the firm is a certified DVBE, the award(s) must be reported as not qualified.

### **§1896.95. Forms.**

The Office of Small and Minority Business shall use the following form for determining certifiable disabled veteran business enterprises: Small Business and/or Disabled Veteran Business Enterprise Certification Application, STD. 812 (Rev. 8-97).

The portions of the STD. 812 concerning disabled veteran business enterprise pertain to the regulations contained in [Sections 1896.60 to 1896.95](#) and are made a part of this regulation ([Section 1896.95, Title 2, California Code of Regulations](#)).

The portions of the STD. 812 that specifically relate to small business certification pertain to the Small Business Procurement and Contract Act.

### **Repealed or Renumbered Sections**

The following sections were repealed or renumbered and have History and Notes available on the Internet at <http://ccr.oal.ca.gov/>.

- §1896.65. Certification by Authorized Representative.
- §1896.66. Contract Audits.
- §1896.67. Adjudicatory and Investigatory Procedures.
- §1896.68. Appeal of Determination.
- §1896.71. Worksite Preference/Contract for Goods.
- §1896.72. Hiring Preference/Contract for Goods.
- §1896.73. Application of Preferences/Contract for Goods.
- §1896.74. Worksite Preference/Contract for Services.
- §1896.76. Application of Preferences/Contract for Services.
- §1896.77. Low Bid or Proposal.
- §1896.78. Assistance to Bidders/Department of General Services.
- §1896.79. Assistance to Bidders/Department of Commerce.
- §1896.81. Hearings.
- §1896.91. Disabled Veteran Business Enterprise Goals.
- §1896.92. Disabled Veteran Business Enterprise Participation.
- §1896.93. Contract Awards.
- §1896.94. Certification.
- §1896.96. Adjudicatory and Investigatory Procedures.
- §1896.97. Monitoring Adherence to the Goals.
- §1896.98. Appeal of Determination.