

California Code of Regulations
Disabled Veteran Business Enterprise Participation
Goal Program for State Contracts Proposed Regulations

Title 2. Administration

Division 2. Financial Operations

Chapter 3. Department of General Services

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

Article 1. General Provisions

§ 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 certification.

NOTE:

Authority cited: §§ 14600 and 14615, Government Code; §§ 999(a) and 999.5(f), Military and Veterans Code.

Reference: §§ 999, 999.2, 999.5, 999.6, and 999.9, Military and Veterans Code and § 10115.9, Public Contract Code.

§ 1896.61. Authority

- (a) The Department shall have the sole responsibility for determining the eligibility of and certifying DVBEs pursuant to the provisions of Article 6 of Chapter 6 of Division 4, Military and Veterans Code, commencing with § 999 and Article 1.5 of Chapter 1, Part 2 of Division 2, Public Contract Code § 10115.9.
- (b) When authorized by the applicant or DVBE, the Department shall share certification records to enable certification by other state, federal or local agencies.

NOTE:

Authority cited: §§ 14837(e), 14839, and 14843, Government Code, §§ 999(b) and 999.5, Military and Veterans Code.

Reference: §§ 14837(e) and 14839, Government Code, § 10115.9, Public Contract Code.

§ 1896.62. Definitions

The terms defined in this article shall have the following meanings:

- (a) **Administering agency** means the Department of General Services' Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) in the case of certification and the Procurement Division in the

case of contracts governed by § 999.2 of the Military and Veterans Code.

- (b) **ALJ** means Administrative Law Judge, as defined in Government Code § 11502, assigned by the Office of Administrative Hearings.
- (c) **Applicant** means a business that has submitted an application (electronic or paper version) for certification with the OSDS.
- (d) **Awarding department** means any state agency, department, or an official empowered by law to enter into contracts on behalf of the State of California.
- (e) **Bid** means an offer made in response to a solicitation.
- (f) **Broker or Agent** means any individual or entity that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department. Any qualifying disabled veteran who does not own 51 percent of the fair market value of the materials and supplies shall be deemed a broker or agent.
- (g) **Certification approval** means a business has met certification criteria as determined in §§ 1896.81, 1896.82, and 1896.83.
- (h) **Certification denial** means an application was denied.
- (i) **Certification notice** means a business was notified, in writing, to provide additional documentation to maintain certification eligibility.
- (j) **Certification revocation** means certification was revoked for any of the reasons specified in § 1896.82(l).
- (k) **Commensurate** means corresponding in size, amount, degree; or proportion.
- (l) **Commercially Useful Function (CUF)** means a DVBE contractor or subcontractor that contributes to the fulfillment of contract requirements as determined by awarding departments in § 1896.71, and does all of, but is not limited to, the following:
 - (1) Is responsible for the execution of a distinct element of work for the contract;
 - (2) Carries out contractual obligations by actually performing, managing, or supervising the work involved;
 - (3) Performs work that is normal for its business services and functions;
 - (4) Is not further subcontracting a portion of the work that is greater than expected to be subcontracted by normal industry practices;
 - (5) Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment; and,
 - (6) Its role is not an extra participant in the transaction, contract or project through which funds are passed in order to obtain the appearance of DVBE participation.

- (m) **Complete federal tax return** means copies of all forms, schedules, and attachments as submitted to the Internal Revenue Service.
- (n) **Contract** means any agreement to provide labor, services, materials, supplies, information technology, or equipment in the performance of a contract, franchise, concession or lease granted, let or awarded for and on behalf of the state. It does not include agreements executed for subvention aid or local assistance. Nor does it include contracts which provide assistance to local governments and aid to the public directly or through an intermediary, such as a non-profit corporation.
- (o) **Contractor** means any individual or entity that enters into a contract as defined in § 1896.62(n).
- (p) **Control** means the disabled veteran owners and/or disabled veteran managers have expertise specifically in the business's field of operation in controlling the overall destiny and in controlling the day-to-day operations of the business.
- (q) **Department or DGS** means the Department of General Services.
- (r) **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 ten-percent service-connected disability recognized by the United States Department of Veterans Affairs or United States Department of Defense and who is domiciled in the State of California.
- (s) **Disabled Veteran Business Enterprise or DVBE** means any business certified by the OSDS, as determined in § 1896.81.
- (t) **DVBE Joint Venture** means two or more DVBEs established by written agreement to engage in and carry out a single venture for which purpose they combine their efforts, property, money, skills and/or knowledge. DVBE joint ventures shall be certified on a bid-by-bid basis.
- (u) **Equipment broker** means one or more DVs who have not established 51-percent ownership of the fair market value of each piece of equipment. This includes possession and risk of loss for equipment that is rented or provided, either directly or as a subcontractor, to an awarding department. It also includes DVs who do not provide individual tax returns, pursuant to Military and Veterans Code § 999.2(c).
- (v) **Equipment rental** means any piece of equipment that is rented or provided for use under contract to an awarding department, including equipment for which operators are provided.
- (w) **Foreign corporation, foreign firm and foreign-based business** means a business that is incorporated or has its principal headquarters located outside of the United States of America.
- (x) **Frivolous** means an appeal with any of the following characteristics:

- (1) It is wholly without merit.
- (2) The appellant has not submitted a rational argument based upon the evidence, regulation and law, which established the appeal.
- (3) The appeal is based upon grounds other than those specified in § 1896.95.
- (y) **Joint bid** means one bid submitted by two or more businesses.
- (z) **Manufacturer** means a business that 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 shall possess characteristics that, as a result of mechanical, chemical, or human action, it did not possess before the original substances, parts, or components were assembled or transformed. 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. Additionally, it meets both of the following requirements: factors considered by the federal Small Business Administration pursuant to Title 13, Code of Federal Regulations (CFR), Chapter 1, Part 121, § 121.406(b)(2) and whether more than fifty percent of annual gross receipts, as determined by the Department, result from the manufacturer and sales of products manufactured by the business as defined in Government Code § 14837(c), pursuant to the determination criteria set forth in § 1896.12, Title 2, California Code of Regulations.
- (aa) **Non-disabled veteran (Non-DV)** means any individual who has not established disabled veteran status.
- (bb) **Office of Administrative Hearings (OAH)** means an office within the Department of General Services.
- (cc) **Office of Small Business and DVBE Services (OSDS)** means the office within the Department of General Services, Procurement Division, that is charged with administration of the DVBE Participation Program in accordance with Military and Veterans Code § 999 (b)(1), Public Contract Code § 10115.4, and Government Code § 14839.
- (dd) **Solicitation** means the notice to prospective bidders that an awarding department wishes to receive bids for furnishing goods, services, information technology, or construction.
- (ee) **Statutory disability** means a service-connected disability enumerated under Title 38, United States Code, § 1114.
- (ff) **Subcontractor** means any individual or entity that will perform a part of the contract.
- (gg) **Suspension** means a temporary debarment from bidding on or participating as a contractor or subcontractor in any state contract.
- (hh) **Unconditional** ownership means ownership that is not limited by conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements of

voting rights, or other arrangements causing or potentially causing ownership benefits to go to another, as determined in § 1896.81.

NOTE:

Authority cited: §§ 14600, 14615, 14839 and 14842(e), Government Code; §§ 2052, 10115.3(b) and 10295, Public Contract Code; §§ 999.5(f) and 999(b)(7), Military and Veterans Code.

Reference: §§ 10115, 10115.1, 10115.2, 10115.3 and 10295, Public Contract Code; and § 999, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

Article 2. DVBE Participation in State Contracting

§ 1896.70. DVBE Participation Goals

(a) The DVBE participation program goal established in Public Contract Code § 10115(c) applies to the awarding department's overall annual expenditures for contracts as defined by § 1896.62(n).

(b) The Director or designee of an awarding department shall establish an appropriate DVBE participation goal either less than or in excess of the statutory goal of three percent for each specific solicitation or contract.

Determining factors for setting an appropriate level of DVBE participation include but are not limited to:

- (1) The elements of work support the specified level of DVBE subcontractor participation is reasonable.
- (2) A search of the OSDS' database supports sufficient DVBEs to perform the 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 or designee may exempt a solicitation from DVBE participation.

Determining factors for exemption include but are not limited to:

- (1) Little or no DVBE subcontracting opportunities.
- (2) Subcontracting the work is not normal for the industry.
- (3) Work is so specialized that there are few or no DVBEs that can perform the work.
- (4) Procurement pursuant to §§ 14838.5(a) or 14838.7(a) of Government Code.

(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 requirement for satisfying the participation goal shall be deemed to have been met when:

- (1) The awarding department determines that the bidder performs a CUF as identified in the solicitation and the bidder is either:
 - (A) A DVBE committed to perform not less than the participation goal stated in the solicitation with its own

resources or in combination with those of other DVBEs, or

- (B) Is not a DVBE and shall use one or more DVBEs for not less than the participation goal stated in the bid.
- (f) The awarding department shall find that the DVBE joint bid has met the participation goal providing the DVBE 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 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) Describe the tasks each DVBE will perform.

NOTE:

Authority cited: §§ 14600 and 14615, Government Code; and §§ 10115.3(b) and 10295, Public Contract Code; and § 999.5(f), Military and Veterans Code.

Reference: §§ 10115 and 10115.2, Public Contract Code; and § 999(b)(7) and (9), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

§ 1896.71. Determination of Commercially Useful Function (CUF)

Factors awarding departments take into consideration to determine if a business performs a CUF include, but are not limited to:

- (a) When providing goods, the DVBE either manufactures the product or is responsible, with respect to products, inventories, materials and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment.
- (b) The DVBE provides an element of the work that is normal for its business. This work shall correlate with the purpose of the contract. In the case of a construction business, the DVBE possesses the appropriate contractor's license for the work being performed.
- (c) The DVBE or awarding department does not violate Government Code § 19130.
- (d) If the CUF determination identifies potential program violations, awarding departments shall investigate and report findings to the OSDS, refer to §§ 1896.88, 1896.91 and State Contracting Manual Topic: Management of DVBE Contract Requirements.

NOTE:

Authority cited: §§ 999, 999.5(a) and 999.6, Military and Veterans Code, §§ 14837, and 14839, Government Code.

Reference: §§ 14837 and 19130, Government Code.

§ 1896.72. Contract Awards

- (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 pursuant to the provisions of Article 3 of Chapter 2 of Part 2 of Division 2 of the Public Contract Code (commencing with § 10301) or the acquisition of information technology (IT) goods and services pursuant to the provision of Chapters 3 and 3.6 of Part 2 of Division 2 of the Public Contract Code (commencing with §§ 12100 or 12125) where the awarding department has reserved the right to make multiple awards or a single contract award, a bidder shall be deemed responsive 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) Prior to contract award, the DVBE shall assure it is in compliance with Public Contract Code §§ 10410 and 10411 and any other relevant conflict of interest for state officers, state employers, or former state employees.

NOTE:

Authority cited: §§ 14600 and 14615, Government Code; §§ 10115.3(b) and 10295, Public Contract Code; and § 999.5(f), Military and Veterans Code.

Reference: §§ 10115.1 and 10115.2, Public Contract Code; and §§ 999(b)(9) and 999.5(f), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

§ 1896.73. Substitution of a DVBE

- (a) DVBE subcontractors shall be used per § 1896.70 unless a substitution is approved by the OSDS. A DVBE subcontractor shall be replaced by another DVBE to perform the work originally stated. The substitution shall maintain, at minimum, the level of participation goal stated in the bid. In the absence of a DVBE, the replacement shall be a certified small business.
- (b) The contractor shall simultaneously notify the DVBE and the awarding department of the intended substitution. The written notice shall contain the reasons for the substitution and be sent by certified mail. The contractor shall submit the following to the awarding department:
 - (1) A copy of the written notice issued to the DVBE with proof of delivery. In the absence of proof of delivery, provide the certified mail receipts.
 - (2) A copy of the DV's consent or opposition to the substitution. In the absence of the consent or

opposition, provide the returned and unopened certified mail.

- (3) The name and supplier number of the business being substituted and the name and supplier number of the proposed replacement. If a DVBE cannot be identified as a replacement, the contractor shall document the absence of DVBEs. In this case, the replacement shall be a certified small business. This documentation shall include but is not limited to:
 - (A) Contact with the SB/DVBE Advocates from awarding department and the Department of Veterans Affairs regarding the absence of DVBEs to perform the specific work.
 - (B) Search results from the DGS website for DVBEs to perform the specific work.
 - (C) Communication with a DVBE Community Organization nearest the worksite regarding the absence of DVBEs, if applicable.
 - (D) Documented communication with DVBEs and small businesses describing the work to be performed, its percentage of the overall contract, the corresponding dollar amount, and their responses to the request.
- (c) The DVBE shall have up to five business days from the postmark date to consent or oppose the substitution. A copy of the DVBE's reply shall be sent simultaneously by certified mail to the contractor and awarding department.
- (d) When written oppositions to a substitution are filed, the awarding department shall grant the DVBE a hearing. The hearing notice shall be issued within five business days from receipt of the opposition. If the awarding department grants the substitution, continue to § 1896.73(e).
- (e) The awarding department shall submit the substitution request to the OSDS:
 - (1) The request must meet the criteria as specified above or § 4107 of the Public Contract Code for Public Works.
 - (2) The substitution request shall be accompanied by the hearing decision, when applicable.
- (f) The OSDS will respond to substitution requests within three business days. The OSDS shall consent to the substitution of another DVBE, or in the absence of a DVBE, a certified small business in any of the following situations:
 - (1) When the DVBE becomes bankrupt, insolvent or goes out of business.
 - (2) When the DVBE does not perform as listed in the Bidder Declaration.
 - (3) When the DVBE does not meet the bond requirements of the contractor.
 - (4) When the DVBE's name is incorrect due to an inadvertent clerical error. In the case of public works contracts, compliance with § 4107.5 of the Public Contract Code is required.
 - (5) When the DVBE is not licensed as required by any State of California regulatory agency.

- (6) When the awarding department, or its duly authorized officer, determines that the DVBE:
- (A) Did not perform in accordance with the plans and specifications; or,
- (B) Has delayed or disrupted the progress of the work.
- (g) The DVBE substitution process shall not be used as an excuse for noncompliance with any provision of law. This includes, but is not limited to, the Subletting and Subcontracting Fair Practices Act (§ 4100 et seq., Public Contract Code) or any contract requirements relating to substitution of subcontractors.
- (h) Contractors who proceed with work pending a substitution decision may be subject to contract termination, recovery of damages under rights, remedies and penalties. This is outlined in § 999.9 of the Military and Veterans Code, § 10115.10 of the Public Contract Code or § 4110 of the Public Contract Code (applies to public works only).

NOTE:

Authority cited: §§ 14600 and 14615, Government Code; §§ 10115.3(b) and 10295, Public Contract Code; and § 999.5(e) and (f), Military and Veterans Code.

Reference: §§ 10115.1 and 10115.2, Public Contract Code; and §§ 999(b)(9) and 999.5(f), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

§ 1896.74. Contract Approval

For purpose of Public Contract Code § 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: §§ 14600 and 14615, Government Code; and §§ 10115.3(b) and 10295, Public Contract Code.

Reference: § 10295, Public Contract Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

§ 1896.75. Special Requirements for Contracts that include Rented Equipment

- (a) Any DV who will rent equipment for use in any state contract shall submit a signed declaration required by Military and Veterans Code § 999.2(d). Declarations may be submitted on a form made available as part of the solicitation. The declaration requirements are as follows:
- (1) The name, address, telephone number, and tax identification number of each DV owning at least 51 percent of each piece of equipment.
- (2) Declare that copies of each DV equipment owner's individual federal income tax return has been provided to the OSDS. The declaration shall also state that the DVBE has met and maintains all certification requirements including submission of all federal tax returns.

(3) Declare whether or not the DVBE is a broker. If the DVBE is a broker, provide the name, address, and telephone number of the DVs acting as a broker or agent.

(b) Failure to provide the declarations to the awarding department will result in the DVBE being deemed an equipment broker in accordance with Military and Veterans Code § 999.2(c). Furthermore, the awarding department shall not count any contract or subcontract with an equipment broker toward DVBE participation goals. DVBE equipment brokers shall not be considered for award for the SB/DVBE Option under Government Code §§ 14838.5 and 14838.7.

NOTE:

Authority cited: §§ 14600 and 14615, Government Code; §§ 10108.7, 10115.3 (b) and 10295, Public Contract Code; §§ 999.1 and 999.2, Military and Veterans Code; §§ 14838.5 and 14838.7, Government Code.

Reference: §§ 999.2 and 999.5, Military and Veterans Code.

§ 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: §§ 14600 and 14615, Government Code; §§ 10115.3(b) and 10295, Public Contract Code; and § 999.5(f), Military and Veterans Code.

Reference: §§ 10115.1 and 10115.2, Public Contract Code; and § 999.5, Military and Veterans Code.

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

NOTE:

Authority cited: §§14600 and 14615, Government Code; and §§ 10115.3(b) and 10295, Public Contract Code.

Reference: § 10115.3(a), Public Contract Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

§ 1896.78. Reporting DVBE Participation Goals

- (a) Data reported by the awarding department as required by § 10111 of the Public Contract Code shall be consistent with the regulations governing the award of the contracts. For contracts with a participation goal, awards shall be reported as proposed by the contractor per § 1896.70(g) or as documented by contract modification per § 1896.76. For contracts awarded without a participation goal, the awarding department shall report each business represented in the contract that is a DVBE.
- (b) Awarding departments shall not count contracts toward participation goals that were awarded to equipment brokers as defined in § 1896.62(u) and in accordance with Military and Veterans Code §§ 999.2(b)(3), 999.2(c) and 999.2(e).
- (c) Awarding departments shall not count toward participation goals any contract funds awarded during any period in which a DVBE is not in compliance with Military and Veterans Code § 999.2(g)(4) with respect to furnishing required declarations.
- (d) Awarding departments shall not count toward participation goals any state funds expended with a business that is not certified.
- (e) Upon completion of a contract for which a commitment to achieve a DVBE goal was made, the contractor shall certify in writing to the awarding department, all of the items listed:
 - (1) Total amount the prime contractor received under the contract.
 - (2) The name and address of the DVBE that participated in the performance of the contract.
 - (3) The amount each DVBE received from the prime contractor.
 - (4) That all payments under the contract have been made to the DVBE.
- (f) Awarding departments shall maintain the contractor's written statement in § 1896.78(e) on file pursuant to records retention requirements.

NOTE:

Authority cited: §§ 14600 and 14615, Government Code; § 10111, Public Contract Code; and §§ 999.2 and 999.5, Military and Veterans Code.

Reference: § 10111, Public Contract Code; §§ 999.2 and 999.5, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

Article 3. DVBE Certification

§ 1896.80. Application

An electronic application may be submitted via the DGS website: <http://www.dgs.ca.gov>. Upon receipt of the electronic application, an acknowledgement will be emailed. Instead of the electronic application, a Small Business & DVBE Certification Application, 812 (Rev. 12/2012), incorporated by reference, may be obtained from the website and submitted to the OSDS. A list of support documents is also contained in the paper application and located on the website.

NOTE:

Authority cited: §§14600 and 14615, Government Code; § 999.5(f), Military and Veterans Code; and § 10115.3, Public Contract Code.

Reference: § 10115.3, Public Contract Code; and § 999.5(f), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

§ 1896.81. Eligibility for Certification as a DVBE

(a) Applications shall be approved, and certification granted, when found to have met eligibility

requirements. Applications that do not meet these requirements shall be denied. If a business is unable to maintain eligibility or has violated program requirements, the certification shall be revoked.

The applicant or DVBE shall meet and maintain all of the following qualifying criteria:

- (1) The DVs shall have at least a ten percent 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 51-percent unconditionally owned by one or more DVs.
- (4) The daily business operations shall be managed and controlled by one or more DVs. The DV who manages and controls the business is not required to be the DV business owner.
- (5) The DVBE shall file and submit federal tax returns to the OSDS annually, without exception.

(b) The OSDS shall evaluate ownership according to the following criteria for specific types of businesses:

- (1) It is a sole proprietorship with at least 51-percent ownership by one or more DVs. If the sole proprietorship submits a federal individual tax return, each owner shall submit a Schedule C. The Schedule C shall list the qualifying DV as the majority owner.
- (2) It is a partnership with at least 51-percent interest unconditionally owned by one or more DVs. The partnership agreement shall reflect each owner's interest.
- (3) It is a limited liability company unconditionally owned by one or more DVs.
- (4) It is a corporation with at least 51-percent 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 limit voting power or control of the DV owners.

- (5) It is a subsidiary. The parent corporation shall be unconditionally owned by one or more DVs. The DVs shall own at least 51 percent of voting stock of the parent corporation.
- (c) Ownership by a living trust. Ownership by a living trust shall be equivalent to ownership by a DV. The trust shall be revocable, and the DV shall be the sole grantor, trustee and beneficiary.
- (d) Ownership by an employee stock ownership plan. The plan shall be less than or equal to 49-percent ownership.
- (e) Ownership shall be unconditional by one or more DVs. Ownership shall not be subject to conditions precedent, conditions subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights, or other arrangements of voting rights, or other 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.
- (f) In determining unconditional ownership, any unexercised stock options or similar agreements held by DVs are disregarded. However, any unexercised stock options or similar agreements (including rights to convert non-voting stock or debentures into voting stock) held by Non-DVs will be treated as exercised, except for any ownership interests that are held by investment companies licensed under part 107 of Title 13, Code of Federal Regulations.
- (g) One or more DV owners shall be entitled to receive:
- (1) At least 51 percent of the annual distribution of profits paid to the owners of a corporation or partnership;
 - (2) One hundred percent of the value of shares of stock in the event that the stock is sold;
 - (3) At least 51 percent of the retained earnings of the business. In the event of dissolution of the corporation or partnership, the DV shall receive 100 percent of the unencumbered value of each share owned.
 - (4) Profits of the business commensurate with the extent of ownership interest.
- (h) The DV owners and/or DV managers shall document they maintain control of the business. The OSDS regards control as including both the strategic policy setting exercised by boards of directors and the day-to-day management and administration of business operations. A business's management and daily business operations shall be conducted by one or more DVs. The DVs managing the business shall have managerial experience of the extent and complexity needed to run the business. However, where a license is held by a Non-DV having an ownership interest in the business, the Non-DV may be found to control the business.
- (i) Control is comprised of two parts -- Managerial and Operational.

- (1) DV owners shall have managerial control of the overall destiny of the business. The DV owners and/or DV managers shall demonstrate responsibility for the critical areas of the business's operations. The DV owners and/or DV managers shall 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, the DV owners and/or DV managers shall demonstrate independent decisions for the day-to-day operations. Absentee or titular management by the qualifying DVs shall not be deemed to be in operational control. The DV owners and/or DV managers shall include an active role in controlling the business. 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 - direct responsibility for subordinates
 2. Work force - direct responsibility for subordinates or subcontractors
 3. Equipment
 4. Materials
 5. Facilities (office /yard)
- (j) The business shall be controlled by one or more DVs who possess requisite management capabilities:
- (1) DVs shall show sustained and significant time invested in the business. A DV engaged in full-time employment or management with another business, federal, state, or local government (30 hours per week or more) shall submit a detailed statement with the application. The statement shall demonstrate why these activities will not impact the DV's ability to manage and control the business. If the DV is a federal, state or local government employee, a copy of the conflict of interest statement or equivalent document shall be submitted.
 - (2) A DV shall hold the highest officer position exercising control over all other positions in the business.
 - (3) A 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. Exception is when the OSDS deems a DV to control the board of directors as provided for in § 1896.81(m)(1).

- (k) 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.
- (l) In the case of a limited liability company, one or more DVs shall serve as managing members, with control over all decisions of the limited liability company.
- (m) In the case of a corporation, one or more DVs shall control the board of directors.
- (1) The OSDS will deem DVs to control the board of directors, including but not limited to, the following:
- (A) A DV owns 100 percent of all voting stock of the business; or
- (B) A DV owns at least 51 percent of all voting stock of a business, the DV is on the board of directors and no supermajority voting requirements exist for shareholders to approve corporate actions. If a supermajority exists that limits the majority DV's voting stock, the applicant or DVBE shall be ineligible for certification; or
- (C) One or more DVs own at least 51 percent 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. The DV shareholders shall demonstrate that they have an enforceable arrangement to permit DV to vote the stock of all as a block without a shareholder meeting.
- (2) Where a business does not meet the requirements set forth in § 1896.81(m)(1), the DVs upon whom eligibility is based shall control the board of directors. Where a business has a two person board of directors, one individual is a DV and one is not, the DV vote shall be weighted. In order for the business to be eligible for certification, the DV's vote shall be worth more than one vote.
- (A) Provisions for the establishment of a quorum cannot permit Non-DV directors to control the board of directors directly or indirectly;
- (B) Any executive committee of the board of directors shall be controlled by DV directors unless the executive committee only makes recommendations to the board.
- (3) Non-voting, advisory, or honorary directors may be appointed without the ability to control the board of directors.
- (4) Arrangements regarding the structure and voting rights of the board of directors shall comply with applicable state law.
- (n) Non-DVs may be involved in the management of a business, and may be stockholders, partners, officers, or directors of the business. Non-DVs shall not:
- (1) Exercise control or have the power to control the business; or

- (2) Receive compensation from the business in any form as directors, officers or employees, including dividends that exceed the compensation received by the DV holding the highest officer position.
- (o) Non-DVs who transfer majority stock ownership of the business to DVs within two years prior to the application and remain involved in the business, in any capacity, are presumed to control the business. This presumption may be rebutted by documenting that the DV has the experience necessary to manage and control all activities of the business. The rebuttal shall be submitted by the DV.
- (p) Non-DVs or entities may be found to control or have the power to control in the following situations, including but not limited to:
 - (1) When the by-laws allow the Non-DVs through a quorum to block the DVs proposals.
 - (2) When the Non-DV provides licenses, critical financial or bonding support which influence business decisions.
 - (3) When the terms of the loan agreement gives the grantor the power to control the business.
 - (4) When relationships exist with Non-DVs or entities which cause such dependence that the DVs cannot exercise independent business judgment without great economic risk.

NOTE:

Authority cited: §§ 14600, 14615 and 14840, Government Code; § 999.5(f), Military and Veterans Code, and §§ 10115.3(b), 10115.9 and 10295, Public Contract Code.

Reference: §§ 10115.1 and 10115.9, Public Contract Code; and § 999(g), Military and Veterans Code, and § 23101, Revenue and Taxation Code.

§ 1896.82. Responsibilities of the DV Applicant and DVBE

In order to be considered by the OSDS for certification as a DVBE, a business must meet, including but not limited to, all of the following:

- (a) A business shall meet all requirements set forth in this subchapter and Article 6 (commencing with § 999) of Chapter 6, Division 4 of the California Military and Veterans Code.
- (b) Provide the following documentation to OSDS electronically or by paper copy, no later than five o'clock p.m. (5:00 p.m.) of the bid due date, unless the regulations (§ 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 DVBE certification application and required support documents;
 - (2) A copy of an Award of Entitlement letter from the United States Department of Veterans Affairs or United States Department of Defense that was issued within six months of the application. The letter shall certify the existence of a service-connected disability of at least ten percent;

- (c) DVBEs shall notify the OSDS in writing upon changes of the business address, contact information, and changes to the DVs home address within 30 calendar days.
- (d) In the case of a renewal, the qualifying DV shall certify in writing there are no changes in the service-connected disability status. If the disability status has changed, a new Award of Entitlement letter is required.
- (e) A DVBE shall maintain all licenses, permits and registrations, including but not limited, to those issued by any California State Department or local government.
- (f) A DVBE shall provide notice to the OSDS and the awarding department, including but not limited to, any changes in licenses, permits, registrations, operation or ownership within 30 calendar days.
- (g) A DVBE, including a DV in the case of equipment ownership, shall provide the OSDS the most recent copies of federal tax returns and amendments upon filing with the Internal Revenue Service, within 90 calendar days.
- (h) The following shall be required for changes in ownership or business structure:
 - (1) DVBE shall submit a new application identifying the new DV owners, DV managers and new business structure. Continued eligibility and the award of any new contracts require that the OSDS first verify that all eligibility requirements are met by the business and the new owners.
 - (2) Any DVBE that is performing contracts and desires to substitute one DV owner for another DV shall submit a proposed novation agreement and supporting documentation to the awarding departments prior to the substitution or change of ownership for approval.
 - (3) In the event of a permanent disability or death of the majority DV owner, the business shall do the following within 30 calendar days:
 - (A) Notify awarding departments.
 - (B) Submit documents establishing the DV's permanent disability or death to the OSDS. In addition, provide documents verifying who controls or has inherited the business. The DVBE designation shall be continued if the business is controlled or inherited by the spouse or children. This designation may not exceed three years. It is solely for the purpose of completing existing contracts. If the business is a small business, a certification application and appropriate documents may be submitted.
- (i) A DVBE shall perform a CUF pursuant to § 1896.62(l) as determined by § 1986.71 by awarding departments.
- (j) A DVBE shall withdraw their certification when they no longer meet eligibility requirements. The OSDS shall end the certification except when the business or its affiliates are under investigation.
- (k) Applicants are responsible for renewing certifications whether or not a renewal notice is received. Renewals shall be submitted, including required documents, prior to the certification expiration dates. Applicants may submit an electronic or paper application. Both options are located on the website at www.dgs.ca.gov.

Renewals may not be submitted earlier than 90 calendar days before certifications expire. An applicant with an expired certification shall submit a new application. An expired certification shall not be submitted as a renewal application.

- (l) DVBE certification shall be revoked for any of the following reasons:
- (1) Failure to respond to a certification notice issued by the OSDS within 30 calendar days from the date of the notice.
 - (2) Failure to notify the OSDS and the awarding department that the certification requirements have not been maintained pursuant to § 999.2(h) of the Military and Veterans Code.
 - (3) Failure to submit federal income returns as required by § 999.2(g) of the Military and Veterans Code.
 - (4) Failure to reinstate to an active status with the California Secretary of State within 60 calendar days.
 - (5) Violation of § 999.9(a) of the Military and Veterans Code shall also include, but is not limited to, suspension from participation in state contracting.
 - (6) Violation of §§ 14842 or 14842.5 of the Government Code shall also include, but is not limited to, suspension from participation in state contracting.

NOTE:

Authority cited: §§ 14600, 14615 and 14840, Government Code; §§ 999.2 and 999.5(f), Military and Veterans Code, and §§ 10115.3(b), 10115.9 and 10295, Public Contract Code.

Reference: §§ 10115.1 and 10115.9, Public Contract Code; and § 999.2(g), Military and Veterans Code, and § 23101, Revenue and Taxation Code.

§ 1896.83. Determination of Intent to Perform a Commercially Useful Function (CUF)

For certification purposes only, the OSDS shall determine if the applicant establishes the intent and ability to perform a CUF pursuant to § 1896.62(l) in the primary business type identified in the application.

Documents to support the determination include, but are not limited to, professional licenses, financial records, ownership, facilities, and agreements required to determine eligibility for certification in § 1896.81.

Certification does not override or replace the CUF determination required of awarding departments in § 1896.71.

NOTE:

Authority cited: §§ 999.(b)(5)(B), 999.5(a) and 999.6, Military and Veterans Code, §§ 14837, and 14839, Government Code.

Reference: §§ 14837 and 19130, Government Code.

§ 1896.84. Certification by the OSDS

- (a) The OSDS shall issue DVBE certification when applicants meet and comply with §§ 1896.81, 1896.82, and 1896.83. The small business certification includes a microbusiness designation. Dual certification means a

DVBE also has a small business certification. Refer to § 1896.4 for the definition of a small business and a small business with a microbusiness designation.

(b) DVBEs when qualified, are issued certifications as follows:

- (1) A DVBE certification valid for 12 months.
- (2) Dual certification, valid for 12 months.
- (3) Dual certification, with microbusiness designation, valid for 24 months.
- (4) The OSDS, at its discretion, may issue short-term certifications, on a case-by-case basis. In addition, this discretion includes issuance of certification extensions up to 12 months.

(c) The OSDS shall notify the business in writing of its certification decision and immediately indicate the status in the database.

(d) The OSDS may certify businesses that have been certified by or on behalf of another governmental organization pursuant to Government Code § 14839.1.

(e) The OSDS shall deny certifications when:

- (1) The application and supporting documents do not meet the eligibility requirements.
- (2) The business does not respond to a certification notice within 30 calendar days.
- (3) Another governmental organization's certification does not meet Military and Veterans Code §§ 999.
- (4) A new application is submitted by the principals of a business who are suspended from contracting with the State of California.

(f) In reviewing an application or the validity of a DVBE certification, the OSDS may do all of the following:

- (1) Require additional documents and information that support eligibility.
- (2) Consider information previously submitted, provided or collected.

NOTE:

Authority cited: §§ 999, 999.5(a) and 999.6, Military and Veterans Code, §§ 14837, 14839 and 14840, Government Code.

Reference: § 999, Military and Veterans Code, § 14837, Government Code.

§ 1896.88. Unlawful Certification and Contracting Activities

(a) Unlawful Certification: It shall be unlawful for a person to do any of the following, including but not limited to:

- (1) Fraudulently obtain or retain certification.
- (2) Make a false statement, whether by affidavit or report, to a state official to influence a certification decision.

- (3) Obstruct or attempt to obstruct any state employee investigating the qualifications of an applicant or certified business.
- (b) Unlawful Contracting Activities: It shall be unlawful for a person to do any of the following, including but not limited to:
- (1) Fraudulently obtain or attempt to obtain public monies or contract awarded by the state to which a person is not entitled.
- (2) Fraudulently represent DVBE participation in order to obtain or retain a bid preference or a state contract.
- (3) Fraudulently represent a CUF in order to obtain or retain a bid preference or a state contract.
- (4) Make or support any false statements.
- (5) Willfully fail to submit declarations or notices to awarding departments pursuant to Military and Veterans Code § 999.2 and § 1896.75.
- (6) Establish or aid in the establishment or control of a firm found to have violated Military and Veterans Code § 999.9(a)(1-9).

NOTE:

Authority cited: §§ 14600 and 14615, Government Code; §§ 999, 999.5(f) and 999.6, Military and Veterans Code.

Reference: § 999.9, Military and Veterans Code, § 14837, Government Code.

Article 4. Enforcement and Sanctions

§ 1896.90. Enforcement

The OSDS shall be responsible for actions against businesses for the enforcement of Military and Veterans Code §§ 999, et seq., Public Contract Code §§ 10115, et seq., and Government Code §§ 14842 and 14842.5. The actions are certification denial and revocation and suspensions from contracting with the state. Information for appealing these actions can be found in Article 5.

- (a) When a business does not meet or no longer meets eligibility requirements, the application or the certification shall be denied or revoked, when denying or revoking an application for certification, the OSDS shall provide a written notice. The notice shall include the reasons for the denial or revocation. The notice shall also provide information regarding the appeal process.
- (b) Any business may be suspended from state contracting activities. When suspending a certified business from contracting activities, the OSDS shall revoke the certification and provide a written notice. The notice shall include affected businesses owned by, affiliated with, financed, or formed by the

principals named in the suspension. The notice shall include the reasons for the suspension and provide the appeal process. Suspensions from contracting with the state; may include referrals to the Attorney General for prosecution and imposition of civil/criminal sanctions for violations.

NOTE:

Authority cited: §§14600 and 14615, 14837(e), and 14839(g), Government Code; §§ 999.5 and 999.9, Military and Veterans Code, §§ 10115.3(b) and 10295, Public Contract Code
Reference: §§ 12651, 14842 and 14842.5 (a) and (d), Government Code; § 999.9, Military and Veterans Code, §§ 10115-10115.15, Public Contract Code.

§ 1896.91. Investigations and Reporting Requirements

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

- (a) The awarding department shall report all alleged violations of Military and Veterans Code §§ 999, et seq. or Public Contract Code §§ 10115 et seq. to the OSDS. The OSDS shall subsequently report alleged violations which have sufficient grounds to the Attorney General who will determine whether to bring a civil action against any person or business for the violations pursuant to Military and Veterans Code § 999.9(e).
- (b) Prior to reporting an alleged violation of Military and Veterans Code §§ 999, et seq., or Public Contract Code §§ 10115 et seq., to the OSDS, the awarding department 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. The results of the awarding department's findings shall be submitted in its entirety to the OSDS within 60 business days of notification or discovery of the alleged violation.
- (c) The OSDS will acknowledge receipt of the awarding department's investigative report within three business days. The OSDS will also evaluate the recommended action and may seek to revoke the certification. If the action will result in revoking the certification, the final OSDS notice may take up to six months.
- (d) The OSDS shall direct allegations it receives to the awarding department for investigation. The process, requirements and timetables are the same as for those allegations identified directly to the awarding department in § 1896.91(b). The Chief of the OSDS may grant an extension of the 60 business day requirement after receiving a written request and justification for the additional time. The extension may be granted at the sole discretion of the Chief. The awarding department shall provide a point of contact for the OSDS.

NOTE:

Authority cited: §§ 14600 and 14615, and 14842.5(a)(d), Government Code; and §§ 10115.3(b) and 10295, Public Contract Code; and §§ 999, 999.5, 999.9, Military and Veterans Code.

Reference: §§ 10115.2, 10115.3(b) and 10115.10, Public Contract Code; and § 999.9, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

§ 1896.92. Sanctions

The OSDS shall recommend, impose and enforce sanctions of Military and Veterans Code §§ 999, et seq., Public Contract Code §§ 10115 et seq., Government Code §§ 12650-12656 specific to the False Clans Act, and sections 14842 or 14842.5. The sanctions shall be imposed against any person who violates the aforementioned laws, the DVBE, and all principals and business affiliates.

NOTE:

Authority cited: §§ 14600, 14615 and 14842.5(a)(d), Government Code; and §§ 10115.3(b) and 10295, Public Contract Code; and §§ 999, 999.5 and 999.9, Military and Veterans Code.
Reference: §§ 10115.2, 10115.3(b) and 10115.10, Public Contract Code; and § 999.9, Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).

Article 5. Appeal Process

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

Decisions to deny or revoke certifications and suspensions from contracting activities may be appealed.

Suspensions shall include a revocation unless the suspended business is not certified. An appeal must establish the decision was in error. When an appellant provides new information that may change the certification decision, the appeal shall be withdrawn and a new application may be required.

- (a) Denials, revocations and suspensions shall become final unless an appeal is received within 30 calendar days from the date of the notice. The Director or designee may grant additional time for appeals when extenuating circumstances prevent a timely appeal.
- (b) The appeal shall be in writing, signed, dated and include a detailed written statement of the facts that support grounds for the appeal as required in § 1896.95(c).
- (c) Grounds for appeal shall be:
 - (1) Denial: The applicant met the requirements and should have been certified based upon the application, supporting documents and records at the time of the decision.
 - (2) Revocation: The business met the requirements and should remain certified based upon the certification file and records at the time of the decision.
 - (3) Suspensions: The suspension should not be imposed because the conditions do not warrant the action.
- (d) 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 information after the decision.
- (e) The DGS Director or designee shall dismiss appeals based on § 1896.95(d) and notify the DVBE. The decision shall be final.
- (f) The DGS Director or designee shall forward appeals to the Office of Administrative Hearings pursuant to § 1896.95(c).

NOTE:

Authority cited: §§ 999, 999.5 and 999.9, Military and Veterans Code; §§ 14600, 14615, 14837(e), and 14839(g), Government Code.

Reference: § 999.9, Military and Veterans Code; §§ 12651, 14842 and 14842.5 (a) and (d), Government Code; § 10115.10, Public Contract Code.

§ 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 § 11500, except as provided in this subchapter. Although a pre-hearing conference is encouraged, it shall be at the Administrative Law Judge's sole discretion. Administrative Law Judges (ALJ), at their sole discretion, shall hear orally and/or by written submission. If a hearing is held, the ALJ shall have discretion to limit the number of witnesses and the time allocated to each; authority to permit or limit cross-examination; and exclusive discretion to issue subpoenas and/or subpoena *duces tecum*. There shall be no right for the appellant to take depositions, issue interrogatories, or subpoena persons or documents. However, the appellant may request information through the California Public Records Act.

NOTE:

Authority cited: §§ 999, 999.5 and 999.9, Military and Veterans Code; §§ 14600, 14615, and 14837, Government Code.

Reference: §§ 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.

§ 1896.97. Appeal Decisions

- (a) Denials: The ALJ shall grant or deny the appeal. If the ALJ grants the appeal, the OSDS shall certify the business pursuant to § 1896.84.
- (b) Revocations: The ALJ shall grant or deny the appeal. If the ALJ grants the appeal, the OSDS will not revoke the certification. If the ALJ denies the appeal, the OSDS will revoke the certification. Prior to the ALJ's decision, the certification will remain valid through its expiration date.
- (c) Suspensions or other sanctions: The ALJ shall grant or deny the appeal, and shall include the imposition of administrative sanctions pursuant to Military and Veterans Code § 999.9, Public Contract Code § 10115.10.

Government Code §§ 14842 or 14842.5, and/or the False Claims Act as appropriate. 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 § 999.9 (c)(3).

NOTE:

Authority cited: §§ 14600, 14615, and 14839, Government Code, §§ 999(a) and 999.5(d), Military and Veterans Code.

Reference: § 999.9, Military and Veterans Code, §§ 11517, 14839 and 14841.5 Government Code.

§ 1896.99.100. Incentive Application

- (a) Whenever an awarding department applies the DVBE program requirement, it shall offer the incentive as outlined in this subchapter for DVBE participation. Other competitive solicitations may also offer this incentive. For departments having met or exceeded the DVBE ~~three~~-percent goal for ~~two~~ out of the ~~three~~ previous years, their highest ranking executive officer or designee may elect to exempt contracts from the DVBE incentive. The ~~three~~ most current published DGS annual reports are used to document a department's DVBE participation goal.
- (b) The incentive is applied during the evaluation process and is only applied for responsive bids from responsible bidders proposing the percentages of DVBE participation for the incentives specified in the solicitation. Solicitations may provide an incentive scale under which bidders obtaining higher levels of participation qualify for greater incentives.
- (c) For award based on low price, the incentive is applied by reducing the bid price by the amount of incentive as computed from the lowest responsive and responsible bid price. The computation is for evaluation purposes only. Application of the incentive shall not displace an award to a small business with a non-small business.
- (d) For award based on high score, the incentive points are included in the sum of non-cost points. The incentive points cannot be used to achieve any applicable minimum point requirements.

NOTE:

Authority cited: Sections 14600 and 14615, Government Code; and Sections 999.5(a) and 999.5(d), Military and Veterans Code.

Reference: Section 14838(f), Government Code; and Section 999.5(a), Military and Veterans Code.

§ 1896.99.120. Incentive Amount

- (a) For award based on low price, the minimum incentive is ~~4~~ one percent with or without a cap. Use of a higher incentive percentage(s) not to exceed ~~5~~ five percent is allowed for a solicitation based upon the need to meet participation goals. For each solicitation, awarding departments' ~~highest ranking executive officer~~ Director or

~~his/her~~ designee may elect to place a cap of not less than \$100,000 on the incentive and/or a cap of not less than \$100,000 for all combined incentives and preferences.

- (b) For award based on high score, the incentive(s) shall not exceed five percent, nor be less than one percent of total possible available points, not including points for socioeconomic incentives or preferences.

NOTE:

Authority cited: Sections 14600 and 14615, Government Code; and Sections 999.5(a) and 999.5(d), Military and Veterans Code.

Reference: Section 999.5(a), Military and Veterans Code.