

**California Code of Regulations
[Small Business Regulations]**

TEXT OF PROPOSED REGULATIONS

In the following, underline indicates “to be adopted” and ~~strikethrough~~, “to be deleted” regulatory text.

TITLE 2. Administration

Division 2. Financial Operations

Chapter 3. Department of General Services

Subchapter 8. Office of Small Business Procurement and Contracts

Article 1. General Provisions

Section 1896 is amended to read:

§1896. Purpose of Subchapter.

~~The purpose of [this subchapter is to sets forth the rules, roles, responsibilities and rights of businesses and the state as they pertain to for applying the small business certification and the non-small business sub-contractor preferences; and it describes how preferential bid consideration is obtained by small businesses and non-small business sub-contractors the rules, roles, responsibilities and rights of businesses and the state as they pertain to small business certification..~~

Note: Authority cited: Sections 14837(d)(4) and 14843, Government Code. Reference: Sections 14835, 14836(b)7, 14838 and 14839.1(a), Government Code.

Subsection 1896.2 is amended to read:

§1896.2. Authority.

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

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

Note: Authority cited: Sections 14837(d)(4), 14839.1, and 14843, Government Code. Reference: Sections 14600, 14835, 14837, ~~and 14839.4~~ and 14842.5, Government Code.

Subsection 1896.4 is amended to read:

§1896.4. Definitions.

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

- (a) Affiliate or affiliation refers to a relationship of direct or indirect control or shared interests, as determined in § 1896.12(d)(6), between the applicant or a small business and another business.
- (b) ALJ means Administrative Law Judge appointed by the Office of Administrative Hearings in accordance with, as Government Code § 11502(b), ~~assigned by the Office of Administrative Hearings to consider and rule on appeals of certification denial, decertification, and sanctions.~~
- (c) Applicant means a business that has currently filed an application for certification as a small business with OSDS the Department on the Small Business Certification Application, STD. 813, REV. 1/2002, which is incorporated by reference.
- (d) Assignment means a transfer of all or part of one's property, interest, rights, or responsibility, ~~or property.~~
- (e) Awarding department means any state agency, department, office, board, commission, ~~institution, hospital, the California State universities and colleges,~~ and any other entity empowered by law to enter into contracts on behalf of the State of California.
- (f) Bid means an offer made in response to a solicitation.
- (g) Business means an entity organized for profit including, but not limited to, ~~an individual, sole proprietorship, partnership, limited liability partnership, corporation, limited liability company, joint venture, association or cooperative; or solely for purposes of the Prompt Payment Act (Government Code 927 et seq.), a duly authorized nonprofit corporation.~~
- (h) Contract means an agreement made by an individual or business which secures services, supplies, equipment or other such considerations for or on behalf of the state
Commercially useful function means:
- ~~(1) The contractor or subcontractor 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 contractor or subcontractor is not further subcontracting a greater portion of the work than would be expected by normal industry practices.~~
 - ~~(3) The contractor or subcontractor is responsible, with respect to materials and supplies provided on the subcontract, for negotiating price, determining quality and quantity, ordering the material, installing (when applicable), and paying for the material itself.~~
 - ~~(4) A contractor or subcontractor will not be considered as performing a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to achieve the appearance of small business participation.~~
- (i) Control means having the power and authority to direct the overall destiny and/or day-to-day operations of the business.
- ~~(j)(i)~~ Department means the Department of General Services.
- ~~(k)(i)~~ Disabled veteran-owned small Business Enterprise (DVBE) means a business so defined pursuant to in the Military and Veterans Government Code § 999(b)(7)(A) 44838(f).
- ~~(l)(k)~~ Employee means an individual employed individual by a business that is either:
- (1) Reported as an employee to the State of California, Employment Development Department (EDD) on the business's Quarterly Contribution Return and Wage and Withholding Report of Wages or other format accepted by EDD; or
 - (2) Reported as an employee by the business on another state's report equivalent to the EDD's Quarterly Contribution Return and Wage and Withholding Report of Wages.
 - (3) A person whose wages are reported to EDD on behalf of the business by a professional employer organization (PEO) or other human resource entities.
- (m) Frivolous appeal means an appeal without merit ~~Independently owned and operated means a business concern that independently manages and controls the day-to-day operations of its own business through its ownership and management, without undue influence by an outside entity or~~

~~person that may have an ownership and/or financial interest in the management responsibilities of the applicant business or small business.~~

~~(n)(f) Gross annual receipts (GAR) means "Total Gross Receipts or Sales"; less "Returns and Allowances," as reported on the business' income tax returns, as filed with the federal Internal Revenue Service. Gross annual receipts and annual gross receipts are used interchangeably and calculation of gross annual receipts of a business shall not be further adjusted to reflect individual ownership percentages, for the purposes of this subchapter. Joint Venture means an association of businesses established by written agreement to engage in and carry out a single business venture for joint profit, for which purpose they combine their efforts, property, money, skills and/or knowledge.~~

~~(o) Local agency means any county, city, city and county, district, public authority, public agency, school district, and any other political subdivision or public corporation in the sState, but does not include the sState.~~

~~(p) Manufacturer means a business as defined in Government Code § 14837(c), pursuant to the determination criteria set forth in Section 1896.12.~~

~~(q) Microbusiness means a small business that, together with affiliates, has average annual gross receipts of three million, five hundred thousand (\$3,500,000) or less over the previous three (3) years, as biennially adjusted by the Department pursuant to the provisions of Government Code § 14837(d)(2), or is an manufacturer, as defined in Government Code § 14837(c), with twenty-five (25) or fewer employees.~~

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

~~(s) Non-Profit Corporation means, for purposes of the Prompt Payment Act, California Government Code §927 et seq, a duly authorized non-profit corporation.~~

~~(r)(f) Non-small business means a business responsible bidder that is not certified as a small business by OSDS.~~

~~(s)(u) Principal office means the place where the business is headquartered, and conducts the management and directs operations of the business.~~

~~(t)(v) Responsive bid and Responsive bidder means the same as State Contracting Manual Volume 2 Chapter 4.D2.0 defines a bid that clearly substantiates compliance without material deviation with all specifications, requirements, and the terms and conditions of the solicitation.~~

~~(u)(w) Small Business means a business that meets the eligibility requirements contained herein, and that has been certified by OSDS the Department as a small business. For the purposes of these regulations, whenever the term small business is used, it means certified small business and includes microbusinesses.~~

~~(v)(*) Solicitation is defined in State Contracting Manual Volume 2 Chapter 4.B1.0 means the notification to prospective bidders that an awarding department wishes to receive bids for furnishing goods, services, information technology, or construction.~~

~~(w) Subcontractor means a contractor who contracts directly with the prime contractor, as Public Contract Code § 4113 defines.~~

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

Note: Authority cited: Sections 14600, 14837(d)(4) and 14843, Government Code. Reference: Sections 927, 927.2, 11000(a)370-2, 11502(b), 14615(a), and 14837, 14838(f), 14839.1, 14842.5(e)(2), and 14842.5 Government Code; Sections § 999 – 999.3, Military and Veterans Code; Sections 1103, 4113 and 10115.10 Public Contracts Code; Volume 2, Chapter 4.B1.0 and 4.D2.0, State Contracting Manual.

Article 2. Small Business Preference

Subsection 1896.6 is amended to read:

§1896.6. Application of the Small Business and ~~Non-Small Business Subcontractor~~ Preferences.

(a) Small businesses will be granted the five percent (5%) small business preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced, responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in § 1896.8, and when the small business:

- (1) Has included in its bid a notification to the awarding department that it is a small business or that it has submitted to OSDS ~~the Department~~ a complete application pursuant to § 1896.14(a) no later than 5:00 p.m. on the bid due date, and is subsequently certified by OSDS ~~the Department~~ as a small business; and
- (2) Has submitted a timely, responsive bid; and
- (3) Is determined to be a responsible bidder.

(b) Non-small business bidders will be granted a five percent (5%) non-small business subcontracting~~ing~~ preference on a bid evaluation by an awarding department when a responsible non-small business has submitted the lowest-priced responsive bid or a bid that has been ranked as the highest scored bid pursuant to a solicitation evaluation method described in §1896.8, and when the non-small business bidder:

- (1) Has included in its bid a notification to the awarding department that it commits to subcontract with at least twenty-five percent (25%) of its net bid price with one (1) or more small business(es); and
- (2) Has submitted a timely, responsive bid; and
- (3) Is determined to be a responsible bidder; and
- (4) Submits a list of the small business(es) it commits to subcontract with for a commercially useful function in the performance of the contract. The list of subcontractors shall include their name, address, phone number, small business certification number (if applicable), a description of the work to be performed, and the dollar amount or percentage (as specified in the solicitation) per subcontractor.

Note: Authority cited: Sections 14837(d)(4) and 14843, Government Code. Reference: Sections 44837 and 14838, 14839, 14839.1(a) and 14840(a) Government Code and Section 4113, Public Contract Code.

Subsection 1896.8 is amended to read:

§1896.8. Computing the Small Business and the ~~Non-Small Business Subcontractor~~ Preferences.

(a) Awards Made to the Lowest Responsive, Responsible Bidder

- (1) The five percent (5%) small business or non-small business subcontracting~~ing~~ preferences are used for bid evaluation purposes when determining a contract award in the following situations:
 - (A) There is at least one (1) small business competing, and award of the contract will be made to the lowest responsive, responsible bidder. The preference shall be computed as follows:
 1. Five percent (5%) is computed from the lowest, responsive and responsible bid of a business that is not a small business. This results in the preference amount.
 2. The preference amount is subtracted from the small business' bid amount.
 - (B) There is at least one (1) non-small business competing that is subcontracting at least twenty-five percent (25%) of its net price bid to one (1) or more small businesses, and award of

the contract will be made to the lowest responsive, responsible bidder. The preference shall be computed as follows:

1. Five percent (5%) is computed from the lowest, responsive and responsible bid of a business that is not a small business, or is not subcontracting to a small business. This results in the preference amount.
2. The preference amount is subtracted from the bid of the non-small business that is subcontracting at least twenty-five percent (25%) of its net price bid to one or more small businesses.

(b) Awards Based on Highest Scored Proposal

(1) The five percent (5%) small business preference or non-small business subcontracting~~er~~ preferences are used for bid evaluation purposes when determining a contract award in the following situations:

(A) There is at least one (1) small business competing, and award of the contract is to be made to the highest scored responsive bid submitted by a responsible bidder following an evaluation process that weighs factors other than price, together in a formula with price. The preference shall be computed as follows:

1. The awarding department shall specify the minimum number of points, if any, that a bid must receive in order to be deemed responsive and of acceptable quality. If a small business does not achieve the specified minimum number of points, it shall not be entitled to the five percent (5%) preference.
2. Five percent (5%) of the score of the highest scored responsive bid submitted by a responsible non-small business is computed as specified in the solicitation. The result of the calculation is a number that represents the preference points.
3. The preference points are then included in the formula as specified in the solicitation to determine the highest scored bidder.

(B) There is at least one (1) non-small business competing that is subcontracting at least twenty-five percent (25%) of its net price bid to one (1) or more small businesses, and award of the contract is to be made to the highest scored responsive bid submitted by a responsible bidder following an evaluation process that weighs factors other than price, together in a formula with price. The preference shall be computed as follows:

1. The awarding department shall specify the minimum number of points, if any, that a bid must receive in order to be deemed responsive and of acceptable quality. If a non-small business does not achieve the specified minimum number of points, it shall not be entitled to the five percent (5%) preference.
2. If the non-small business achieves the specified minimum number of points, five percent (5%) of the score of the highest scored responsive bid submitted by a responsible non-small business that is not subcontracting a minimum of twenty-five percent (25%) of its net price bid to one (1) or more small businesses is computed as specified in the solicitation. The result of the calculation is a number that represents the preference points.
3. The preference points are then included in the formula as specified in the solicitation to determine the highest scored bidder.

(c) If, after application of the small business preference to the bid of a small business, that bid is equal to the lowest priced, responsive bid from a responsible non-small business, or equal to the highest scored bid offered by a responsible non-small business, as applicable, the contract shall be awarded to the small business for the amount of its bid.

(d) If, after application of the non-small business subcontracting~~er~~ preference, a responsible non-small business that has submitted a responsive bid is the lowest bidder, and does not displace a small business from winning the award, the contract shall be awarded to the non-small business for the amount of its bid.

(e) In no event shall the amount of the small business or non-small business subcontracting~~er~~ preferences awarded on a single bid exceed fifty thousand dollars (\$50,000), and in no event shall the combined cost of the small business or non-small business subcontracting~~er~~ preference and preferences awarded pursuant to any other provision of law exceed one hundred thousand dollars (\$100,000). In bids that the state has reserved the right to award by line item, or make multiple awards, the small business preference shall be applied to maximize the participation of small businesses.

(f) In the event of a precise tie between the bid of a small business and the bid of a DVBE disabled veteran business enterprise that is also a small business, the award shall go to the DVBE disabled veteran business enterprise that is also a small business.

Note: Authority cited: Sections 14837(d)(4) and 14843, Government Code. Reference: Sections 4535.2, ~~7084, 7118~~ and 14838, 14839 and 14839.1(a) Government Code; ~~Sections 12102 and 12162, Public Contract Code.~~

Subsection 1896.10 is amended to read:

§1896.10. Substitution of a Small Business Subcontractor.

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

(1) An explanation of the reason for the substitution.

(2) The contractor must substitute a small business with another small business. However, if the small business substitution cannot occur, the contractor must include a written justification and the steps that were taken to try to acquire a new small business subcontractor and how that portion of the contract will be fulfilled.

(3) A description of the work to be performed, identified both as a task(s) and as a dollar amount or percentage of the overall contract that the substituted business will perform. The substituted business(es), if approved, shall be required to perform a commercially useful function in the contract as pursuant to § 1896.156 defines.

(b) The request for substitution of a small business 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 (~~–~~§ 4100 et seq., Public Contract Code) or any other contract requirements relating to substitution of subcontractors.

(c) If a contractor requests substitution of its subcontractor(s)/supplier(s) by providing a written request to the awarding department in accordance with this subsection ~~§ 1896.10~~, the awarding department may consent to the substitution in any of the situations set forth in ~~Public Contract Code~~ § 4107 of the Subletting and Subcontracting Fair Practices Act.

(d) 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 the reasons for the request to substitute. The notice shall be served by certified or registered mail to the last known address of the subcontractor. The listed subcontractor that has been so notified shall have five (5) working days after the receipt of the notice to submit written objections to the substitution to the awarding department. Failure to file these written objections shall constitute the listed subcontractor's consent to the substitution. If written objections

are filed, the awarding department shall give notice in writing of at least five (5) working days to the listed subcontractor of a hearing by the awarding department on the prime contractor's request for substitution.

(e) Failure of the contractor to subcontract with the small businesses listed on its bid to the state, or follow these substitution rules may be grounds for the Department to apply such ~~impose~~ sanctions as pursuant to Government Code §§ 14842 and 14842.5 and the subsequent provisions of this subchapter permit §1896.16. In the event such sanctions are ~~to be~~ imposed, the contractor shall be notified in writing and entitled to a hearing pursuant to §§ 1896.18 and 1896.20.

Note: Authority cited: Sections 14837(d)(4), 14842(f), and 14843, Government Code. Reference: Sections 14837, 14842 and 14842.5 Government Code; and Sections 4100, 4107, and 4107.5, Public Contract Code.

Article 3 Heading is amended to read:

Article 3. Small Business Eligibility, Certification Process and Responsibilities

Subsection 1896.12 is amended to read:

§1896.12. Eligibility for Certification as a Small Business.

(a) To be eligible for certification as a small business, a business must meet all of the following qualifying criteria:

- (1) It is independently owned and operated; and
- (2) ~~It's~~ The principal office is located in California; and
- (3) The officers of the business (in the case of a corporation); officers and/or managers, or in the absence of officers and/or managers, all members in the case of a limited liability company; partners in the case of a partnership; or the owner(s) in all other cases, are domiciled in California; and
- (4) It is not dominant in its field of operation(s), and
- (5) It is either:

(A) A business that, together with all affiliates, has 100 or fewer employees, and annual gross receipts of fifteen ~~fourteen~~ million dollars (\$154,000,000) or less as averaged for the previous three (3) tax years, as biennially adjusted by the Department in accordance with ~~pursuant to~~ Government Code § 14837(d)(3) (If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence); or

(B) A manufacturer as defined herein that, together with all affiliates, has 100 or fewer employees.

(b) To be eligible for designation as a microbusiness, a business must meet all the qualifying criteria in subparagraph (a)(1) – (4), and in addition, must be either:

- (1) A business that, together with all affiliates, has annual gross receipts of three million, five hundred thousand dollars (\$3,500,000) or less as averaged for the previous three (3) tax years, as biennially adjusted by the Department in accordance with ~~pursuant to~~ Government Code §14837(d)(3) (If the business or its affiliate(s) has been in existence for less than three (3) tax years, then the GAR will be based upon the number of years in existence); or
- (2) A manufacturer as defined herein that, together with all affiliates, has 25 or fewer employees.

(c) Joint ventures ~~may~~ must be certified as a small business or microbusiness on a bid-by-bid basis. ~~The joint venture shall not be subject to the average annual gross receipts and employee limits imposed by this subchapter.~~ when each individual business of the joint venture is a certified small

business. The joint venture is established by written agreement to engage in and carry out a business venture for joint profit, for which purpose they combine their efforts, property, money, skills and/or knowledge. The joint venture shall not be subject to the average annual gross receipts and employee limits imposed by this subchapter. However, each individual business participating in the joint venture must be certified as a small business.

(d) Criteria for Certification Determination(s):

(1) In determining if a business is eligible for certification, ~~OSDS the Department~~ may consider the applicant's ~~or small business'~~ organizational structure, operations and business relationships during the previous three (3) tax years (or years the business has been in existence if fewer than three (3) tax years), ~~and OSDS~~ may request the applicant provide copies of income tax returns as filed with the ~~State of California or other jurisdictions California Franchise Tax Board~~ in addition to the required federal income tax returns and schedules, as filed with the federal Internal Revenue Service, ~~and/or~~ other documentation deemed necessary for the ~~OSDS~~ Department to make a final certification determination.

(2) The OSDS may require the owner(s) or the certified firm to complete and submit an Internal Revenue Service Form 4506-T, for the purpose of requesting a tax return transcript for certification eligibility review. ~~In determining if a business is eligible for small business certification, the applicant business, together with all affiliates, has been in existence less than three years shall have 100 or fewer employees, and an average annual gross receipts of \$14 million or less as averaged by the number of years in existence, as adjusted by the Department pursuant to Government Code, § 14837(d)(3).~~

(3) ~~In determining if a business is eligible for microbusiness certification, applicant business, together with all affiliates, in existence less than three years shall have an average annual gross receipts of \$3.5 million or less as averaged by the number of years in existence, as adjusted by the Department pursuant to Government Code, §14837(d)(3).~~

(4) Government Code § 14837(c) defines manufacturer for purposes of this subchapter. OSDS's ~~The Department's~~ determination of whether a business is a manufacturer may include consideration of ~~be based on, but not limited to:~~ (A) Whether the business, with its own facilities, performs the primary activities in transforming inorganic or organic substances into the end item being acquired, and is not a packager or, in the case of kits, a final assembler. The end item must possess characteristics that, 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. (B) ~~The factors considered by the federal Small Business Administration pursuant to Title 13, Code of Federal Regulations (CFR), Chapter I, Part 121, § 121.406(b)(2).~~ (C) Whether more than fifty percent (50%) of its' annual gross receipts, as determined by the Department, result from the manufacture and sale of products manufactured by the business.

(4)(5) OSDS's ~~The Department's~~ determination of whether the officers, owners and/or partners, managers or members of a business, as applicable, are domiciled in California may be based on, but not be limited to, a review of:

- (A) Voter registration records;
- (B) Homeowner's property tax ~~exemption~~ filings;
- (C) Driver's licenses;
- (D) Utility billings; ~~and~~
- (E) Individual state tax returns; and
- (F) Other currently valid documentations, acts, occurrences, or submissions events that indicate presence in California is more than temporary or transient, and clearly substantiate the claimed domicile.

~~(5)~~(6) ~~OSDS's The Department's~~ determination of whether the ~~p~~Principal ~~o~~Office of a business is located in California, as GC §14837(d) mandates, may shall be based on, but not limited to, a review of the address or physical location where management, direction and control of operations originate.:

- ~~(A) In the case of a corporation, the location where the corporate officers manage, direct and control the operations must be located within California;~~
- ~~(B) In the case of Limited Liability Companies, the location where the Manager(s) and/or Officer(s) or Members manage, direct and control the operations must be located within California;~~
- ~~(C) In all other cases, the location where the owner(s) manage, direct and control the operations must be located within California.~~

~~(6)~~(7) ~~OSDS's The Department's~~ determination of whether a business is affiliated with another, with respect to satisfying GC §14837(d) requirements ~~business,~~ may be based on, but not limited to, historical and current factors including ownership, management, financial and/or business relationships or ties with another business, such as familial relationships, contractual relationships, assignments, passage of title to goods or merchandise, and other related matters as reflected in tax returns and other documentation.

- (A) ~~OSDS The Department~~ may additionally consider the following in determining affiliation:
 1. The applicant business assigns a contract, in whole or in part, to another business.
 2. There exists common ownership and/or management with the applicant business and another business.
 3. The applicant business and another business share facilities, equipment, systems, or employees.
 4. There is a familial relationship with the applicant business and another business and both businesses are in the same industry.
 5. A person or business has assisted the applicant business with activity to meet bond/security requirements.
- (B) The following types of business relationships shall not be considered affiliations:
 1. A franchise and/or license agreement provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership.
 2. A manufacturer's or service provider's representative provided that a written agreement exists between the manufacturer(s) or service provider(s) and the representative that substantiates the independent nature of the individual businesses.

(C) A joint venture shall be deemed an affiliate for the purposes of this subchapter.

~~(7)~~(8) A business entity whose ownership interests, management and operation are not subject to control, restriction, modification or limitation by an outside source, individual or another business entity is considered independently owned and operated. OSDS The Department shall presume an applicant business not to be independently owned and operated if evidence exists of any of the following exists:

- (A) An outside person or business concern owns or controls, or has the power to control, fifty percent (50%) or more of the voting stock of the applicant business, or
- (B) One or more business owners, general partners, directors, officers or members of an outside business concern controls or has the power to control or influence the day-to-day operations of the applicant business, board of directors and/or owner(s) of the applicant business.

~~(8)~~(9) ~~An applicant business concern that exercises or has the ability to exercise a controlling or major influence, on a statewide basis, in a kind of business activity or field of operation in which a number of business concerns are primarily engaged, may shall be determined to be dominant in its field of operation, and statutorily ineligible for small business certification. The following criteria,~~

among others, may be considered by the OSDS Department in determining if the applicant business is dominant in its field of operation:

- (A) Volume of business;
- (B) Financial resources;
- (C) Competitive status or position;
- (D) Ownership or control of materials, processes, licenses agreements and facilities;
- (E) Sales territory and nature of business activity.

(e) Except as limited by law, and only in order to determine the eligibility of a business for certification as a small business, OSDS the Department may consider whatever information is provided to it from multiple sources, including but not limited to those seeking certification, and records gathered or held by any California state or local agency, any governmental agency of another state, or the federal government.

(f) To promote a core statewide small business certification process, the Department shall provide local agencies and the general public web access to a small business statewide directory maintained by the OSDS for the purpose of searching and confirming small b~~Businesses that have been certified by or on behalf of other governmental organizations may be eligible for certifications as a small business if the organization uses substantially the same or more stringent definitions as those set forth in Government Code § 14837 and substantially the same or more stringent certification analysis process than used by the Department.~~

(g) Nonprofit veteran service agencies are eligible for certification as a small business if all of the conditions set forth in Military and Veterans Code Subsection 999.51 are met. Nonprofit public benefit corporations are registered with the Department solely for the purpose of compliance with the provisions of the California Prompt Payment Act (Government Code §927 et seq.).

Note: Authority cited: Sections 14837(d), 14839 and 14843, Government Code. Reference: Sections 927.2(e), 14615(a), 14837(c) and (d), 14838, 14839(a) and (h), 14839.1(b) and 14340(b), Government Code; Section 999.51, Military and Veterans Code; and Title 13, Code of Federal Regulations (CFR), Chapter I, § 121.406.

Subsection 1896.14 is amended to read:

§1896.14. Responsibilities of the Applicant Small Business.

(a) In order to register and be considered by OSDS the Department for certification as a small business a business must:

- (1) Supply electronically via the appropriate web portal, or s~~Submit a completed hard copy certification request application to OSDS the Department, including all of the required substantiating documentation and information needed by OSDS the Department to determine the business' eligibility for small business certification; and~~
- (2) Submit all the information requested by the date and time stated in r~~Responded to any notice from OSDS the Department, by the date and time specified by the Department, with all additional information requested,; Upon good cause or provide reasons acceptable to the Department regarding why the deficiency request cannot be fulfilled OSDS may extend deadlines; and~~
- (3) Meet all eligibility requirements as set forth in this subchapter.
- (4) OSDS must be immediately notified of any changes in operation or ownership during the certification application process.

(b) A business that does not meet the eligibility requirements for certification, or does not respond to requests from OSDS for additional information by the date and time specified, will be denied certification. A small business must provide written notification to the Department of any changes in its

~~operation or ownership during its certification period that may affect its continuing eligibility as a small business pursuant to § 1896.12. Should a small business be sold during its certification period, the certification is not transferable to the new owners. Should the new business owners choose to do so, they may submit a new application for certification.~~

~~(c) A certified small business shall keep current all of its licenses or permits during certification. Small business contractors and subcontractors shall perform commercially useful functions in each contract they are awarded by the state agencies.~~

~~(d) Every business certified as a small business shall be subject to reverification of status at any time. Failure by a small business to provide requested information that supports its continued eligibility as a small business, by the date and time specified by the Department, shall be grounds for decertification.~~

Note: Authority cited: Sections 14837(d)(4), 14839.1(a), and 14843, Government Code. Reference: Sections 14837(d)(4), 1483942(i), 14840(a) and 14842.5, Government Code.

Subsection 1896.15 is adopted to read:

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

(a) A certified small business contractor, subcontractor or supplier of goods and/or services that contributes to the fulfillment of the contract requirements, shall perform a Commercially Useful Function (CUF) for each contract in accordance with the requirements of GC §14837(d)(4).

(b) A small business contractor, subcontractor, or a supplier of goods and/or services is deemed to perform a CUF if the business does all of the following:

(1) Is responsible for the execution of a distinct element of the work of the contract; (including the supplying of services and goods);

(2) Carries out its obligation by actually performing, managing, or supervising the work involved;

(3) Performs work that is normal for its business services and functions;

(4) 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.

(5) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(c) A contractor, or subcontractor or supplier will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of small business participation.

(d) Contracting/procurement officials of the awarding department must:

(1). Evaluate if a certified small business (including microbusiness) awarded a contract, meets the CUF requirement as defined in this subsection.

(2) During the duration of the contract, monitor for CUF compliance. (see State Contracting Manual Volume 1 Chapter 8 and Volumes 2 and 3, Chapter 3).

(e) If a CUF evaluation identifies potential program violations, the awarding departments shall investigate and report findings to the OSDS in accordance with § 1896.17(i).

Note: Authority cited: Sections 14837(d)(4), 14839.1, and 14843, Government Code. Reference: Sections 14837, 14839(g) 14842.5(a)(6) and 14842.5(e), Government Code; Sections 999(b)(5)(B) and 999.6 Military and Veterans Code; Volume 1 Chapter 8 and Volumes 2 and 3, Chapter 3, State Contracting Manual.

Subsection 1896.16 is amended to read:

§1896.16. Certified Status by the Department.

(a) A business meeting the eligibility and certification requirements set forth herein shall be certified as a small business, ~~and shall be accorded all rights and privileges due pursuant to that certification, and included in the statewide directory of certified small businesses maintained by the OSDS.~~

(b) A certified small business meeting the microbusiness eligibility requirements ~~is~~ shall also be designated a microbusiness. If the business exceeds the eligibility requirements for microbusiness designation at any time during the certification period, the microbusiness designation automatically ceases ~~shall be removed~~. However, ~~as long as the business still meets the eligibility requirements for a small business, the small business certification shall not be affected for the remainder of the certification period.~~

(c) A small business must promptly provide written notification to OSDS of any changes in its operation or ownership during its certification period that may affect its continuing eligibility as a small business. Should a small business be sold during its certification period, certification ceases and certification is not transferable to new owners. New owners may seek certification in accordance with § 1896.12. The Department may certify businesses that have been certified by or on behalf of another governmental organization that uses substantially the same or more stringent definitions as those set forth in Government Code § 14837, and substantially the same or more stringent certification analysis process than used by the Department.

(d) Certification approval ~~may~~ will be valid for up to thirty-six (36) months. ~~Prior to the end of a certification period, OSDS in its sole discretion, the Department may extend the certification period up to an additional twenty-four (24) months after certification eligibility re-verification or confirmation pursuant to § 1896.12. The total period of certification, including extensions, shall not exceed sixty (60) months. At the end of a 60-month certification period, businesses may re-apply for recertification. Recertification requests may not be submitted earlier than ninety (90) days before an existing certification expires. If eligible, a new certification period of up to 36 months, with extensions up to an additional 24 months, will begin.~~

(e) Certified small businesses are subject to verification of status at any time. The application of a business that does not meet the eligibility requirements for certification as a small business, or does not respond to requests from the Department for additional information, will be denied certification.

Note: Authority cited: Sections 14837(d)(4), 14839.1(a), and 14843, Government Code. Reference: Sections 14837(d)(4), 14839.42(a), and 14839(g)42.5, Government Code.

Subsection 1896.17 is adopted to read:

1896.17. Discontinued or Revoked Certification and the Imposition of Sanctions.

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

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

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

(3) The average annual gross receipts and/or employee limits imposed by this subchapter have been exceeded during the period of certification;

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

(5) Upon evidence which would reasonably lead to the conclusion that certification has been improperly retained.

(b) 1896.16(f) If a small business is determined by OSDS the Department to no longer meet the eligibility requirements of this subchapter for small business certification, the certification may shall be discontinued by OSDS revoked.

(c) 1896.16(h)(4) The small business certification, and the disabled veteran business enterprise certification if the business has both certifications, of the business found to have violated subdivision (a) of Government Code § 14842 shall be revoked for a period of not less than five (5) one years. For additional or subsequent violations, the revocation suspension shall be extended for a period of up to ten (10) three years. Revocation applies to business principals and any subsequent business formed by one or more of those principals, as Government Code § 14842(e) sets forth.

(d) 1896.16(h)(1)-(2) Pursuant to Government Code § 14842, the Department may impose the following sanctions on Aa business that obtains or retains certification as a small business on the basis of having furnished incorrect or, incomplete supporting or fraudulent information to the department or knew or should have known that the information furnished or withheld was incorrect, incomplete and/or relevant to the process of obtaining small business certification, and the result is the award of any contract and that has been awarded one or more contracts to which it would not otherwise have been entitled as a result of the certification, shall, in accordance with Government Code § 14842:

(1) The business shall Ppay to the state any difference between the contract amount awarded to the business and the contract amount had it been properly awarded; and

(2) Pay to the awarding state agency and the Department an amount equal to the costs incurred for investigating the certification that lead to the finding that the contract had been improperly awarded; and

(32) The business shall be assessed an additional penalty in an amount of not more than ten percent (10%) of the amount of the contract involved; and

(e) 1896.16(h)(3) The Department shall suspend any person who violates subdivision (a) of Government Code § 14842 business shall be ineligible to from transacting any business with the state in the capacity of contractor or subcontractor for a period of not less than three (3) years months and not more than ten (10) 24 years months. 1896.16(m) State agencies may reject the bid of a supplier business offering goods, information technology, or services manufactured or provided by a subcontractor if that subcontractor has been declared ineligible to transact any business with the state pursuant to Government Code § 14842, even though the bidder is a business in good standing.

(f) Government Code § 14842.5(a) makes it unlawful for any person to:

(1) Knowingly and with intent to defraud fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain:

(A) Small business or microbusiness certification;

(B) Public moneys, contracts, or funds expended under a contract, that are awarded by any state agency, department, officer, or other state governmental agency, to which the person is not entitled under the Act;

(C) Or fraudulently represent:

(i) Certified small business or microbusiness participation in order to obtain or retain a bid preference or a state contract;

(ii) A commercially useful function is being performed by a certified small business or microbusiness in order to obtain or retain a bid preference or a state contract;

(2) Willfully and knowingly:

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

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

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

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

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

(4) Prior to the imposition of sanctions, a business shall be entitled to a public hearing and at least five (5) working days' notice of the time and place thereof.

(5) Any person in violation of (1) – (3) shall pay all investigation costs leading to the finding of the violation:

(A) Incurred by the awarding state agency; or

(B) By the Department of General Services;

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

(g) 1896.16(i) Any decertification, suspension, revocation and/or civil penalty issued pursuant to Government Code §§ 14842 or 14842.5 shall, unless otherwise statutorily specified, apply to the principals of the business, and neither the business nor the principals may re-apply for certification, either as the same business or a new business, for a period of not less than three (3) one years, not more than ten (10) two years, from the date of certification revocation. Periods of suspension or revocation are extended, as statutorily specified, in instances of additional or subsequent violation, and under other circumstances existing contracts are terminated, contract payments offset and legal costs and attorney fees recovered. 1896.16(g) If it is determined by the Department that a small business is not performing a commercially useful function on a contract it has been awarded by a state agency, or on a state contract that it is performing as a subcontractor, the certification may be revoked.

(h) To the extent GC §§ 14836(b) and 14839(g) makes permissible, OSDS shall aid, counsel, assist and protect the interest of a small business concern whenever doing so is clearly appropriate and justified by exceptional circumstances.

(i) Suspected or alleged certification program and process abuse or misconduct should be reported to OSDS. Awarding departments shall submit to OSDS a written report, supporting evidence and recommended action within sixty (60) business days of notification or discovery of an alleged offense or abuse. An extension may be granted by OSDS after receiving a written request justifying additional time; however an OSDS acknowledgement will be within three (3) business days. 1896.16(i) Pursuant to Government Code § 14842, the Department may impose sanctions on a business that has obtained classification as a small business or microbusiness by reason of having furnished incorrect supporting information or by reason of having withheld information, and that knew, or should have known, the information furnished was incorrect or the information withheld was relevant to its request for classification, and that by reason of that classification has been awarded a contract to which it would not otherwise have been entitled; under conditions set forth in Government Code § 14842, the business may be prohibited from:

(1) Entering into a state project or state contract,

(2) Bidding to an awarding department,

(3) Being a subcontractor to a contractor for an awarding department,

~~(4) Being a supplier to an awarding department.~~

~~(j) 1896.16(k) When denying an application for certification, discontinuing decertifying a small business certification, or imposing any other sanctions, including suspension, revocation, monetary penalty, or cost recovery, the Department will notify the business will be notified in writing. The notice shall include the reasons for the determination denial, decertification, or imposition of sanctions, as applicable, together with the statutory or regulatory authority or basis for such, and provide information regarding the process for appealing the decision(s). 1896.16(j) Pursuant to Government Code §§ 14842 and 14842.5, the Department may impose sanctions on a person or business for knowing, willful and intentional violations of a penalty of not more than \$5,000.~~

Note: Authority cited: Sections 14837(d)(4), 14839.1(a), and 14843, Government Code. Reference: Sections 14836(b), 14837(d)(1), 14939(g), 14842 and 14842.5, Government Code.

Article 4. Appeals

Subsection 1896.18 is amended to read:

§1896.18. Appeal of Certification Denial, Discontinuance ~~Decertification~~, or the Imposition of Sanctions.

(a) A business, having been denied certification as a small business, or having been provided written notice by OSDS the Department of its intention to discontinue certification of decertify the business as a small business, or of its intention to impose sanctions may have thirty (30) calendar days from the date of the written notice to appeal the Department's determination.

(b) OSDS will specify the appeal deadline ~~An appeal shall be filed with the Department by the date and time specified by the Department in its notice.~~ The appeal shall be in writing and include a detailed written statement of the facts supporting the appeal.

(c) Grounds for appeal shall be:

(1) The applicant should have been certified as a small business based on the information contained in the application including, if applicable, supplemental material submitted to OSDS the Department upon its request, as of the date of the ~~Department's~~ notice of certification denial.

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

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

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

(e) Upon receipt of an appeal, OSDS will determine jurisdiction. An appeal may be rejected if:

(1) The appeal is not timely or requested information has not been provided in a timely manner;

(2) Submission of information subsequent to a decision or after a written deadline has passed;

(3) The appeal is based on grounds other than those specified in § 1896.18(c);

(f) The OSDS will forward appeals to the Office of Administrative Hearings.

Note: Authority cited: Sections 14837(d)(4), 14839(g) and 14843, Government Code. Reference: Sections 11500 et seq., 14839.1(a), 14840, 14842 and 14842.5, Government Code.

Subsection 1896.20 is amended to read:

§1896.20. Appeal Hearings.

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

Note: Authority cited: Sections 14837(d)(4), and 14843, Government Code. Reference: Sections 11500 et seq. [Administrative Adjudication: Formal Hearing] 11501, 11502, 11503, 11504, 11504.5, 11505, 11506, 11507, 11507.3, 11507.5, 11507.6, 11507.7, 11508, 11509, 11511.5, 11511.7, 11512, 11513, 11514, 11515, 11516, 11517, 11518, 11518.5, 11519, 11520, 11521, 11523, 11524, 11526, 11527 and 11528, Government Code.

§1896.22. Appeal Decisions.

The ~~decision of the ALJ~~ may ~~shall be an order to uphold or deny the appeal, and may shall include the imposition of sanctions, in accordance with pursuant to~~ Government Code §§ 14842 and 14842.5, ~~as appropriate. If the ALJ upholds the appeal of a certification denial or decertification, the Department shall certify the business as a small business pursuant to § 1896.16.~~

Note: Authority cited: Sections 14837(d)(4), and 14843, Government Code. Reference: Sections 11517(c)(2), 14842 and 14842.5, Government Code.

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

Subsections 1896.60 through 1896.61 are unchanged.

§ 1896.62. Definitions.

Subsections 1896.62(a) through 1896.62(k) are unchanged.

Subsection 1896.62(l) is amended:

(l) Commercially Useful Function (CUF) means the same as Military and Veterans Code § 999(b) defines 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.~~

Subsections 1896.62(m) through 1896.62(s) are unchanged.

Subsection 1896.62(t) is amended to read:

(t) DVBE Joint Venture means one ~~two~~ or more DVBEs have entered into a established by written agreement with at least one business to hold a minimum of fifty one percent (51%) or more of the joint venture's management, control, and earnings, and 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.~~

Subsections 1896.62(u) through 1896.62(hh) are unchanged.

Note: Authority cited: Sections 14600, 14615(a), 14839(h) and 14842(e), Government Code; Sections 2052, 10115.3(b) and 10295, Public Contract Code; Sections 999.5(f) and 999(b)(7), Military and Veterans Code. Reference: 11502(b), Government Code; Sections 10115, 10115.1, 10115.2, 10115.3 and 10295, Public Contract Code; and Section 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).

Subsection 1896.70 is unchanged.

Subsection 1896.71 is amended to read:

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

~~(a) A certified disabled veteran business contractor, subcontractor or supplier of goods and/or services that contributes to the fulfillment of the contract requirements, shall Factors awarding departments take into consideration to determine if a business performs a Commercially Useful Function (CUF) include, but are not limited to for each contract in accordance with the requirements of MV&C §999(b)(5)(B). When providing goods, the DVBE either manufacturers the product or is responsible, with respect to products, inventories, materials and supplies required for the contract, or negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment.~~

(b) A disabled veteran business contractor, subcontractor, or a supplier of goods and/or of services is deemed to perform a (CUF) if the business does all of the following:

- (1) Is responsible for the execution of a distinct element of work of the contract (including the supplying of services and goods);
- (2) Carries out its obligation by actually performing, managing, or supervising the work involved;
- (3) Performs work that is normal for its business services and functions;
- (4) 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;

(5) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

~~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) A contractor, subcontractor or supplier will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in the transaction, contract or project through which funds are passed in order to obtain the appearance of DVBE participation. The DVBE or awarding department does not violate Government Code § 19130.

(d) Contracting/procurement officials of the awarding department must:

(1) Evaluate if a certified disabled veteran business awarded a contract meets the CUF requirement as defined in this subsection.

(2) During the duration of the contract, monitor for CUF performance compliance (See State Contracting Manual Volume 1 Chapter 8 and Volumes 2 and 3, Chapter 3).

(e) If a the CUF evaluation determination identifies potential program violations, awarding departments shall investigate and report findings to the OSDS, refer to §§ 1896.88, and 1896.91 and State contracting Manual Topic: Management of DVBE Contract Requirements.

NOTE: Authority cited: Sections 999, 999.5(fa), and 999.6, 999.9(a)(6) and 999.9(d) Military and Veterans Code; Sections, 14837, and 14839(g), Government Code; Reference: Sections 14837(d)(4)(A) and (B) and 19130, Government Code and Sections 999(b)(5)(B) and 999.5(a), Military and Veterans Code.

Subsection 1896.72 is unchanged.

Subsection 1896.73 is amended to read:

§ 1896.73. Substitution of a DVBE.

Subsection 1896.73(a) is amended to read:

(a) DVBE subcontractors shall be used per § 1896.70 unless a substitution is approved by 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.~~

Subsections clauses 1896.73(b)(1) through 1896.73(b)(2) are unchanged.

Subsection clause 1896.73(b)(3) is amended to read:

(b)(3) The name and supplier number of the business being substituted and the 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:

Subsections clauses 1896.73(b)(3)(A) through 1896.73(b)(3)(C) are unchanged.

Subsection clause 1896.73(b)(3)(D) is amended to read:

(b)(3)(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.

Subsection clauses 1896.73(c) through 1896.73(e) are unchanged.

Subsection clause 1896.73(f) is amended to read:

(f) The OSDS will respond to substitution requests within three (3) 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:

Subsections 1896.73(f)(1) through 1896.81 are unchanged.

Subsection 1896.82 is amended to read:

§ 1896.82. Responsibilities of the DV Applicant and DVBE.

Subsection 1896.82(a) through (f) are unchanged.

Subsection 1896.82(g) is amended to read:

(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.~~ OSDS may require the DV or the certified firm, to complete and submit an Internal Revenue Service Form 4506-T, for the purpose of requesting a transcript for certification eligibility review.

Subsections 1896.82(h)(1) through 1896.82(h)(3)(A) are unchanged.

Subsection clause 1896.82(h)(3)(B) is amended and clause (C) adopted to read:

1896.82(h)(3)(B) Submit documents establishing the DV's permanent medical disability or death to the OSDS. In addition, provide documents verifying who controls or has inherited the business. Upon proof of a DV's permanent medical disability or death, the DV majority owned business shall be deemed to continue as a DVBE for a period not to exceed three years after the date of death or after the date of certification of permanent medical disability, if the business is inherited or controlled by the spouse or child of the majority owner, or by both of those persons. 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.

1896.82(h)(3)(C)

A business is deemed to continue as a DVBE pursuant to (h)(3)(B) solely for the purpose of:

- (1) Fulfilling the requirements of a contract entered into, prior to the death or certification of permanent medical disability, for the duration of said contract.
- (2) Providing sufficient time to make orderly and equitable arrangements for the disposition of the business, except that the business shall not enter into any new contract as a DVBE, if the contract cannot be completed within the allowable three year period.

Subsections 1896.82(i) through (l) are unchanged.

Note: Authority cited: Sections 14600, 14615 and 14840(b), Government Code; Sections ~~999(b)(7)(B)~~, 999.2 and 999.5(f), Military and Veterans Code, and Sections 10115.3(b), 10115.9 and 10295, Public Contract Code. Reference: Sections 10115.1 and 10115.9, Public Contract Code; Section 999.2(g), Military and Veterans Code, and Section 23101, Revenue and Taxation Code.

Subsection 1896.83 is repealed:

~~§ 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: Sections ~~999.(b)(5)(B)~~, ~~999.5(a)~~ and ~~999.6~~, Military and Veterans Code, Sections 14837, and 14839, Government Code. Reference: Sections 14837 and 19130, Government Code.~~

Subsections 1896.84 through 1896.99.120 are unchanged.