

**D ▾ V ▾ B ▾ E**  
**Business**  
**Utilization Plan**

A Commitment to  
Contract with California  
Disabled Veteran  
Business Enterprises

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- ▶▶ INSTRUCTIONS
- ▶▶ FOR PREPARATION
- ▶▶ AND SUBMISSION



State of California ▶▶ Department of General Services  
**Procurement Division**  
May 7, 2004

## California's Commitment to Disabled Veterans

The State of California acknowledges the service and sacrifice of its disabled veterans, in part, through the "Disabled Veteran Business Enterprise (DVBE) Participation Program." With the DVBE program, state agencies have a goal to award at least 3% of their annual contract dollars to certified DVBEs.

When firms bid on designated state contracts, they have the option of fulfilling the DVBE requirement for each contract or submitting an annual "DVBE Business Utilization Plan" that commits them to doing business with certified DVBEs throughout the year. This document explains the utilization plan option, specifically:

- What is a "DVBE Business Utilization Plan" and who can use one?
- What factors should be considered when deciding whether or not to establish a DVBE Business Utilization Plan?

This package contains:

- The DVBE Business Utilization Plan Application
- Instructions for Submittal
- An Explanation of the Review Process

This document is published by the  
State of California  
Department of General Services,  
Small Business and DVBE Services Branch

Please direct Questions or Comments to:

DGS-PD  
Small Business and DVBE Services Branch  
707 3<sup>rd</sup> Street, 1st Floor, Room 400  
West Sacramento, CA 95605  
(916) 375-4940 - (800) 559-5529

## **What is a DVBE Business Utilization Plan (BUP)?**

A DVBE Business Utilization Plan is a written commitment to contract with certified DVBEs for at least 3% of your business' total contract dollars expended in California during the next year. This 3% applies to *all* business done by your firm *in* California -- not just contracts *with* the State of California.

Public Contract Code (PCC) establishes the DVBE Business Utilization Plan as an option to fulfill DVBE Participation Program requirements (See § 10115.15).

## **Contracts That Qualify for a DVBE Business Utilization Plan**

State agencies may accept DGS-approved business utilization plans when awarding contracts only for goods and information technology goods and services to meet DVBE Participation Program requirements. Business Utilization Plans (BUP) are not applicable to any other type of contract.

## **Meeting DVBE Participation Goals**

Many State contracts have a stated DVBE participation goal. The goal for an individual contract may be more or less than 3%. When a firm bids on a state solicitation, the bid must address how the firm intends to meet the DVBE goals. A firm has three compliance options for doing so:

- A. Locate and commit to subcontracting with *certified* DVBE firms who will perform at least 3% or the percent of work specified by the contract; or
- B. Demonstrate a credible effort to obtain DVBE participation ("Good Faith Effort").
- C. Reference a DGS-approved DVBE Business Utilization Plan

## **What is a Certified DVBE?**

A certified DVBE is one currently certified by the State of California, Office of Small Business and DVBE Certification (OSDC), SB/DVBE Services Branch. A list of currently certified DVBEs can be found on-line at [www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus).

## **Who Should Choose the Business Utilization Plan Option?**

Any firm that intends to bid on state contracts for "materials, supplies or equipment, including electronic data processing and telecommunications goods and services" may request a business utilization plan. However, each firm should decide if a business utilization plan is the best method for achieving the 3% DVBE goal. This decision requires an evaluation of your firm's total California expenses versus the value of

contracts you anticipate being awarded. The higher the percentage of state contracts you anticipate being awarded, the more sense it makes to consider the business utilization plan option.

Some things to consider:

- The preparation of a business utilization plan and the subsequent reporting of requirements take time and commitment. If you only bid on a few state contracts each year, it may be easier to simply fulfill the DVBE requirements each time you bid.
- A business utilization plan is a promise to contract 3% of your total in-state business to DVBEs; **if you fail to meet the commitment, you may be prevented from doing future business with the state for up to two years.** You'll find more information on penalties on page 10.

### **For More Information**

For more information, please contact the Small Business and DVBE Services Branch at (916) 375-4940 or (800) 559-5529.

# Instructions for Completing a DVBE Business Utilization Plan

Use these instructions for assistance in completing the accompanying “DVBE Business Utilization Plan application.”

## **Section 1: Company Information**

Enter the general information requested for your company.

## **Section 2: Plan Submittal Information**

2A. Check only one box, indicating the submittal status of the application.

2B. Answer “yes” or “no,” indicating whether or not the application is being submitted to meet DVBE compliance with a pending state agency bid.

2C. If you answered, “yes” to Item 2B, complete Item 2C.

## **Section 3: Plan Administrator**

The Plan Administrator is the company manager or officer responsible for administering the business utilization plan and ensuring that the goals are achieved. Enter the requested information for the Plan Administrator.

## **Section 4: Goals and Objectives**

4A. The Plan’s goal is established and has already been entered. There is no need to add anything else to Section 4A.

4B. List the primary objectives of your DVBE Business Utilization Plan. Be specific: Explain how each objective will be implemented and how success will be measured. If necessary, attach a separate page and label it “Section 4.”

*Some examples of Plan objectives might include: (Be specific: Explain how each objective will be implemented and how success will be measured).*

- Establish a DVBE outreach program
- Develop a database for monitoring contracts and offers to DVBEs, including how the database will be utilized when subcontracting
- Establish reporting systems for active DVBE contracts

### **Section 5: Estimated U.S. Contract Dollars**

Simply fill in the blank provided.

Estimate the total dollars to be subcontracted by your company for sales within the United States for the year of the plan.

### **Section 6: Estimated California Contract Dollars**

Simply fill in the blank provided.

Estimate the total dollars to be subcontracted by your company for sales within California for the year of the plan.

### **Section 7: Estimated Dollars to be subcontracted with DVBEs**

Simply fill in the blank provided.

Calculate the estimated amount to be subcontracted with certified DVBEs: Multiply the amount estimated in Section 6 (California dollars to be subcontracted) by the amount of your DVBE goal (which must be at least 3%).

### **Section 8: Products to be contracted**

List the representative products and services that your company anticipates contracting. Check “yes” or “no,” indicating which of those products and services your company anticipates subcontracting with DVBEs.

If necessary, attach a separate page and label it “Section 8.”

### **Section 9: Vendor Outreach**

List the outreach methods your company will use in California to make DVBEs aware of contracting opportunities with your company. Be specific: Explain how each method will be implemented and how success will be measured. If necessary, attach a separate page and label it “Section 9.”

*Some examples of vendor outreach might include:*

- Use the on-line search engine available on the OSDC homepage ([www.pd.dgs.ca.gov/smbus](http://www.pd.dgs.ca.gov/smbus)) to locate certified DVBEs (Certified Firms Inquiry Services)
- Attend focused conferences and tradeshow (identify specific shows)
- Advertise in appropriate trade and focus publications (identify specific publications)

## **Section 10: List Records and Reports**

The records and reports your company must maintain are pre-determined and may be requested by the DGS-PD, Office of Small Business and DVBE Outreach and Education at any time. The specific information required in these documents has been entered into Section 10 of the application; there is no need to enter additional information. If your company plans to maintain additional records or reports, attach a separate page and label it "Section 10."



*If this is the first time your company has submitted a DVBE Business Utilization Plan, you do not have to complete Sections 11 – 14. Just complete Section 15, and then follow the instructions for submitting your application.*

*If your company is renewing an existing plan, please continue to Section 11.*



## **Section 11: Estimated vs. Actual**

Follow these instructions for completing the chart in Section 11:

Enter the effective date of your previously approved plan.

(Columns A – C). In Columns A – C, simply copy the information from your previously approved plan; there is no need to perform new calculations.

(Column D). In Column D, report the actual, verifiable expenditures made by your company during the one-year effective period of your previously approved DVBE Business Utilization Plan. This is the total dollar amount the company contracted, subcontracted, rented, and spent in California for commodities, services and construction during the one-year effective period of the most recently approved DVBE Business Utilization Plan.

(Column E). In Column E, report the total dollars the company subcontracted or paid to California certified DVBEs. This amount *should not* include any wages paid to disabled veterans employed by the company.

(Column F). In Column F, calculate the DVBE expenditures as a percent of total California expenditures by dividing the amount in Column E by the amount in Column D.

## **Section 12: Certified DVBE Firm Information**

During the period that your previous plan was in place, your firm was required to keep records of the successful contracts made with DVBE firms (See Section 10, Report #1).

"Successful contacts" means those contacts made by your firm with certified DVBEs that resulted in payment to the certified DVBE.

Attach the report detailing the successful contacts made with certified DVBE firms. The contents of this report is pre-determined and explained in Section 10, Report #1. Simply attach this report and label it "Section 12."



*Refer to the completed chart in Section 11.*

*If the percentage reported in Section 11, Column F is greater than the percentage reported in Column B; your firm met the goals identified in your previous plan.*  
**CONGRATULATIONS!** *Because you met your goals, you do not have to complete sections 13 and 14 of the application. Just complete Section 15, and then follow the instructions for submitting your application.*

*If the amount reported in Column F is less than the amount reported in Column C, your firm did not meet the goals identified in your previous plan. Please complete Sections 13, 14 and 15*



# DVBE Business Utilization Plan Application

**FOR STATE USE ONLY**

Plan Effective Date
From
To
Ref. #

For guidance in completing this application, please refer to the instructions in the accompanying document "Instructions for Completing a DVBE Business Utilization Plan."

## Section 1

Company Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Company Phone # ( ) \_\_\_\_\_

Company FAX # ( ) \_\_\_\_\_

Company e-mail \_\_\_\_\_ Homepage www. \_\_\_\_\_

## Section 2

2A. Please check only one box below, indicating that the plan being submitted is a:

- First-time submittal of a DVBE Business Utilization Plan
- Renewal of an existing DVBE Business Utilization Plan
- Resubmission of a DVBE Business Utilization Plan to correct deficiencies
- Update of an expired DVBE Business Utilization Plan

2B. Is this plan being submitted to meet DVBE compliance with a pending state bid?

- Yes
- No

2C. If you answered "yes" to Question 2B, complete the following:

Bid opening date: \_\_\_\_\_

State agency issuing the solicitation: \_\_\_\_\_

Solicitation Number: \_\_\_\_\_

State agency contact person: \_\_\_\_\_

State agency contact's phone number: \_\_\_\_\_

## Section 3

The Plan Administrator is the company manager or officer responsible for administering the business utilization plan and ensuring that the goals are achieved. Enter the following information for the Plan Administrator:

Name \_\_\_\_\_

Phone # ( ) \_\_\_\_\_ Fax # ( ) \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

e-mail address \_\_\_\_\_

A description of the Plan Administrator's duties \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Section

4

4A. Plan Goal

It is the goal of this company to meet the State of California's DVBE participation goals by subcontracting at least 3% of its California business to certified DVBEs.

4B. List Plan Objectives

If necessary, attach a separate page and label it "Section 4."

Section  
5

The total estimated dollar amount to be subcontracted by this company for sales *within the United States* during the year covered by this plan is \$\_\_\_\_\_.

Section  
6

The total estimated dollar amount to be subcontracted by this company for sales *in California* during the year covered by this plan is \$\_\_\_\_\_.

Section  
7

The total estimated dollar amount to be subcontracted by this company with certified Disabled Veteran Business Enterprises during the year covered by this plan is \$\_\_\_\_\_.

Section  
8

List the representative products and services that your company anticipates contracting. Indicate which of those products and services your company anticipates subcontracting with DVBEs.

Product or Service	Intend to subcontract with DVBEs?	
	YES	NO
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>
_____	<input type="checkbox"/>	<input type="checkbox"/>

If necessary, attach a separate page and label it "Section 8."

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Section  
**9**

List the outreach methods your company will use in California to make DVBEs aware of contracting opportunities with your company.

If necessary, attach a separate page and label it "Section 9."

Section  
**10**

The company will maintain the following reports:

**Report #1: Successful Contacts** – A list of certified DVBEs with which your company did business and paid during the one-year period that the plan is in effect, including:

- 10A: the product or service the DVBE provided
- 10B: the dollar amount subcontracted to each DVBE
- 10C: the company name, business address, contact name, and phone number of the DVBE utilized
- 10D: the firm’s DVBE reference number (issued to them by the Office of Small Business and DVBE Certification)
- 10E: the date of the contact
- 10F: how the DVBE was identified (i.e., through advertising, from the CSCR [California State Contracts Register], at a tradeshow, etc.)

**Report #2: Unsuccessful Contacts** – A list of contacts made with DVBEs for the purpose of subcontracting that *did not* result in contracts including:

- 10G: the product or service solicited or offered to the DVBE
- 10H: the dollar amount that was offered to the DVBE
- 10I: the company name, business address, contact name, and phone number of the DVBE firm
- 10J: the firm’s DVBE reference number (issued to them by the Office of Small Business and DVBE Certification)
- 10K: the date of the contact
- 10L: how the DVBE was identified (i.e., through advertising, from the CSCR [California State Contracts Register], at a tradeshow, etc.)
- 10M: the specific reasons that the DVBE did not receive a contract

Report #3: Summary Report – A quarterly report summarizing and totaling the data collected in Reports 1 and 2. The quarterly summary report will be submitted to the DVBE Program Group.



*If this is the first time your company has submitted a DVBE Business Utilization Plan, please skip now to Section 15.*

*If your company is renewing an existing plan, please Continue to Section 11.*



# DVBE Business Utilization Plan Renewal

Those firms renewing an existing or expired DVBE Business Utilization Plan must complete Sections 11 - 14.

## Section 11

Complete the chart below. The purpose of this chart is to compare your firm's actual DVBE expenditures to those projected in your previous plan.

Enter "To" and "From" dates, indicating the one-year period of time during which your previous plan was active.

For each column, refer to the instructions in the accompanying document, "DVBE Business Utilization Plan Instructions for Preparation and Submission."

Enter the resulting totals.

"From" (start date of previous plan): _____			"To" (end date of previous plan): _____		
ESTIMATED EXPENDITURES			ACTUAL EXPENDITURES		
A	B	C	D	E	F
Total Estimated California Expenditures from previous plan	DVBE goal (as a percentage) from previous plan	Total Estimated DVBE Expenditures from previous plan	Total Actual California Expenditures during one-year effective period	Total Actual DVBE Expenditures during one-year effective period	Actual percent of DVBE expenditures (Column E divided by Column D)
\$	%	\$	\$	\$	%

## Section 12

Report on the successful contacts that your firm made with certified DVBEs by attaching Report #1, as explained in Section 10 of this application. Please label the attached report "Section 12."

▼ ▼ ▼  
*If the percentage reported in Section 11,  
Column F is greater than the percentage reported in  
Column B, please go to Section 15.*

*If the percentage reported in Column F is less than the  
Percentage reported in Column B, please continue to  
Section 13.*

▲ ▲ ▲

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Section  
**13**

Explain and document the business reasons that prevented the company from achieving its minimum 3% DVBE goal. If necessary, attach a separate sheet and label it "Section 13."

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Section  
**14**

Report on the unsuccessful contacts made by your firm with DVBEs by attaching Report #2, as explained in Section 10 of this application. Please label this attachment "Section 14."

Section  
**15**

This plan must be signed by either the Plan Administrator identified in Section 3, or by a company manager or officer authorized to commit the firm to achieving its DVBE participation goals.

I declare under the penalty of perjury under the laws of the State of California that the information contained in the attached application is true and correct.

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Phone Number \_\_\_\_\_

▼▼▼  
This completes your DVBE Business Utilization Plan.  
See page 8 of the accompanying document to learn how  
and where to submit your plan.

Do not forget to include your attachments, if any.



**Section 13: Reasons for Not Meeting Goal**

Explain and document the business reasons that prevented your firm from achieving its minimum 3% DVBE goal. The reasons given must be specific and measurable.

**Section 14: Report of Unsuccessful Contacts**

During the period that your previous plan was in place, your firm was required to keep records of the unsuccessful contacts made with DVBE firms (See Section 10, Report #2).

“Unsuccessful contacts” means those contacts made by firm with certified DVBEs that did not result in payment to the DVBE.

Attach a report detailing the unsuccessful contacts made with certified DVBEs. The contents of this report are already in Section 10, Report #2. Simply attach this report and label it “Section 14.”

**Section 15: Authorized Signature**

This plan must be signed by either the Plan Administrator listed Section 3, or by a company manager or officer authorized to commit the firm to achieving its DVBE participation goals.

▼ ▼ ▼  
*This completes your DVBE Business Utilization Plan. Please  
turn to the next page for instructions on how to submit  
your plan*  
▲ ▲ ▲

# Submitting Your Completed DVBE Business Utilization Plan

## When to Submit

If you are submitting a plan that is intended to satisfy DVBE goals for a particular state agency solicitation, the plan must be approved by the Department of General Services, Procurement Division, prior to the bid's solicitation date.

Public Contract Code (PCC) states that a plan shall be considered approved "as of the date submitted...so long as the plan meets the minimum criteria." So, *technically*, your plan may be submitted the same day the solicitation is due, and, *if you've done everything correctly*, your plan will be approved and will satisfy the DVBE requirements of the solicitation you are bidding on. **However, waiting until the last day to submit your plan is risky because if it contains any errors or omissions, they must be corrected before the plan can be approved.**

**Because any inadequacies in the plan must be addressed and corrected before the bid solicitation date, you should submit your plan as early as possible to allow time for revision.**

## Where to Submit

Submit Plans to:

Department of General Services  
Procurement Division  
Small Business and DVBE Services Branch  
RE: DVBE BUSINESS UTILIZATION PLAN  
707 3<sup>rd</sup> Street, 1st Floor, Room 400  
West Sacramento, CA 95605

# The Review Process

The Procurement Division will review your plan to verify that you have included all of the information required in Sections 1-15 of the instructions. When a decision is made, you will be notified in writing of one of the following outcomes:

## **Plan Approval**

If your plan is approved, you will receive an approval letter with the following information:

- The plan's effective date
- The expiration date (one year from the effective date)
- The DVBE goals for the year covered by the plan
- Compliance reporting due dates. At least every three months, vendors will be required to report success towards meeting their stated DVBE goals.

## **Incomplete Plans**

If your plan does not include all of the information required by Sections 1-15, or if further information is needed for clarification, you will receive a letter of deficiency and an opportunity to correct those deficiencies.

## **Plan Denial**

Public Contract Code (PCC) specifies three reasons for which a plan can be denied:

1. If the plan does not include all the information required;
2. If the plan does not show sufficient business reasons for failure to achieve goals set forth in the previous year's plan;
3. If the plan does not show sufficient remedial steps the vendor will take if the vendor did not meet the goals set forth in the previous year's plan.

If any of these items occur, you will receive a denial letter. An applicant whose plan is denied may not submit a new plan for one year from the date of denial. Before a plan is denied, the applicant is entitled to a five-day notice and a public hearing. For more information, see Public Contract Code (PCC), Section 10115.15, Subsection (C) (1) (A-C).

# Potential Audits and Penalties

**Your approved business utilization plan must be accurate and verifiable. Plans are randomly audited and vendors whose plans are not in compliance may face penalties.**

If an audit determines that a vendor was awarded a contract as a result of an approved business utilization plan, and the vendor does not show intent to fully comply with the goals of the approved plan, or fails to show sufficient business reasons for failing to achieve the goals, the vendor shall be subject to the following penalties:

1. Pay to the state any difference between the contract amount and what the state's costs would have been if the contract had been properly awarded, and
2. Pay a penalty not more than 10% of the amount of the contract, and
3. Be ineligible to transact any business with the state for a period of time not less than three months and not more than 24 months.

Before such penalties are imposed, the vendor is entitled to a public hearing.

For more information, see Public Contract Code (PCC), Section 10115.15, Subsection (C)(3)(A-C).

# California Laws Pertaining to DVBEs and DVBE Business Utilization Plans

The following pages contain the text of an important document pertaining to DVBEs and DVBE Business Utilization Plans. You should read and understand the document before preparing and submitting your DVBE Business Utilization Plan.

## **Public Contract Code (PCC) Section 10115.15**

The text of the Public Contract Code (PCC), Section 10115.15, below, appears here just as it exists in current California law. You will notice that the code refers to *minority*, *women*, and disabled veteran business enterprises. However, on March 9, 1998, the Ninth Circuit Court of Appeals determined that “the achievement of minority and women business enterprise goals...are unconstitutional.” As you read the contract code below, remember that all references to minority and women business enterprises are no longer valid.

PCC 10115.15 (a) Notwithstanding Section 10115.2, when awarding contracts for materials, supplies, or equipment, including electronic data processing goods and services, an awarding department shall accept the submission by a bidder of minority, women, and disabled veteran business enterprise utilization plan that has been approved prior to the solicitation due date by the Department of General Services. A business utilization plan shall be considered approved by the Department of General Services as of the date submitted to the department so long as the plan meets the minimum criteria established in paragraphs (1) to (12), inclusive, and shall be valid for a period of one year, unless the department has audited the utilization plan, as authorized under subdivision (b), and disapproves it for reasons specified under subdivision (c). The decision of whether to establish a minority, women, and disabled veteran business enterprise utilization plan shall be at the option of the vendor. If a bidder cites an approved utilization plan in response to the minority, women, and disabled veteran business enterprise participation requirements of a solicitation that calls for 15 percent minority-owned, 5 percent women-owned, and 3 percent disabled veteran-owned business participation, then that utilization plan shall be considered responsive to the participation goals of the solicitation document. If a solicitation specifies higher participation goals than those in the bidder’s utilization plan, the bidder shall meet the goals in the solicitation or make a good-faith effort to do so. At a minimum, the utilization plan shall include the following information:

(1) A statement of the vendor’s minority, women, and disabled veteran business enterprise utilization plan, including the primary objectives of the utilization plan.

(2) An explanation showing sufficient business reasons why the vendor did not meet minority, women, and disabled veteran business enterprise participation goals set forth in the vendor's minority, women, and disabled business utilization plan submitted to, and approved by, the Department of General Services in the previous year, if applicable. Further, if the vendor did not meet the minority, women, and disabled veteran business participation goals in the previous year, the vendor shall also identify remedial steps it will take to meet the goals in the current utilization plan.

(3) A statement of the vendor's minority, women, and disabled veteran business utilization goals for the succeeding year. At a minimum, these utilization goals shall be equal to the statewide participation goals set forth in subdivision © of Section 10115.

(4) Estimated total dollars to be subcontracted by the vendor for sales within the United States for the succeeding year.

(5) Estimated total dollars to be subcontracted by the vendor for sales within the State of California for the succeeding year.

(6) Total dollars expressed as a percentage of the amount estimated pursuant to paragraph (4), intended to be subcontracted with each of the following: (A) Minority business enterprises. (B) Women business enterprises.

(7) Total dollars, expressed as a percentage of the amount estimated pursuant to paragraph (5), intended to be subcontracted with disabled veteran-owned business enterprise.

(8) A representative listing of the products and services that the vendor anticipates subcontracting, including an identification of the types of subcontracting planned for minority, women, and disabled veteran business enterprises.

(9) The name of the individual employed by the vendor who will administer the vendor's utilization plan, including a description of the duties of the individual.

(10) A description of the efforts that the vendor will undertake to ensure that minority, women, and disabled veteran business enterprise will have an equitable opportunity to compete for contracts.

(11) A listing of the records and reports that the vendor will maintain to demonstrate the practices and procedures that have been adopted to comply with the requirements and goals of the utilization plan.

(12) Affirmation that the vendor met the statewide minority, women, and disabled veteran business enterprise utilization goals for the previous year if applicable.

(b) The Department of General Services shall conduct random audits of the submitted utilization plans to determine compliance with this article, and shall retain on file all submitted utilization plans for auditing purposes. During any audit of a submitted utilization plan, the Department of General Services may ask a vendor to submit a list of all minority, women, and disabled veteran business enterprises included as subcontractors in the vendor's plan for the previous year. This information shall remain confidential. Nothing in this section shall be construed to require the Department of General Services to audit all of the minority, women, and disabled veteran business enterprise utilization plans

submitted by individual vendors. The department of General Services may establish appropriate fees to cover the actual costs of conducting random audits and retaining on file all submitted plans.

(c)(1) At any time, the Department of General Services may disapprove a vendor's minority, women, and disabled veteran business enterprise utilization plan for any of the following reasons:

(A) The utilization plan fails to evidence a vendor's intention to comply fully with the statewide minority, women, and disabled veteran business enterprise goals for the succeeding year, as indicated by failure of the utilization plan to contain the information specified in subdivision (a).

(B) The utilization plan fails to evidence sufficient business reasons for failure to achieve the minority, women, and disabled veteran business enterprise goals set forth in a utilization plan submitted in the previous year, if applicable.

(C) The utilization plan fails to evidence sufficient remedial steps the vendor will take if the vendor did not meet minority, women, and disabled veteran business participation goals in the previous year, if applicable.

(2) If a vendor's utilization plan is disapproved, the vendor may not submit a new utilization plan to the department for a period of one year from the date of disapproval. Prior to disapproval of a vendor's utilization plan, the vendor shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(3) A vendor that submits a minority, women, and disabled veteran business utilization plan that is approved by the Department of General Services, and that is subsequently awarded a contract to which the vendor would not otherwise have been entitled, and who fails to evidence intention to fully comply with the minority, women, and disabled veteran business enterprise goals in the utilization plan, or fails to evidence sufficient business reasons for failing to achieve the minority, women, and disabled veteran business enterprise goals set forth in the utilization plan, shall:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to transact any business with the state for a period of not less than three months and not more than 24 months.

Prior to imposition of any sanction under this chapter, the contractor or vendor shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.