

Office of Small Business and DVBE Services (OSDS)
NOTICE OF APPEAL - Non-Profit Veteran Service Agency

Instructions

1. Complete the Notice of Appeal form.
2. Prepare a detailed written statement of facts supporting the appeal.
3. Submit the Notice of Appeal and written statement within 30 calendar days from the date of the notice by mail or facsimile transmission to:

Department of General Services, Office of Small Business and DVBE Services
ATTN: Compliance and Quality Assurance Manager
707 Third Street, 1st Floor, Rm. 400 MS 210, West Sacramento, CA 95605
Facsimile Number (916) 375-4950

Appellant's Information

Business Name of Appellant

OSDS Certification Number

Mailing Address

Appellant (Owner/Officer)

City, State, and Zip Code

(____)_____
Telephone Number

Counsel's Information (if applicable):

Name of Counsel

Name of Law Firm

Mailing Address of Law Firm

(____)_____
Telephone Number of Law Firm

City, State, and Zip Code

I have reviewed a copy of GC §§ 11507.5 – 11507.7 and 14842 – 14843; M&VC § 999.51, 2 CCR § 1896.18, and a copy of this Notice of Appeal. I hereby submit an appeal to the decision rendered by the OSDS.

Signature of Appellant

Date

Printed Name of Appellant

**Office of Small Business and DVBE Services (OSDS)
Appeal Process – NVSA Program**

**California Code of Regulations, Title 2, Section 1896.18 Appeal of Certification Denial,
Discontinuance, or the Imposition of Sanctions**

- (a) A business, having been denied certification as a small business, or having been provided written notice by OSDS of its intention to discontinue the business as a small business, or of its intention to impose sanctions, have thirty (30) days from the date of the written notice to appeal the Department's determination.
- (b) OSDS will specify appeal deadline 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 upon its request, as of the date of the notice of certification denial.
 - (2) The business should remain certified as a small business based on the information contained in the application, including, if applicable, supplemental material submitted to OSDS upon its request, as of the date of the determination.
 - (3) Sanctions should not be imposed, because one or more of the just causes or conditions set forth in Government Code §§ 14840, 14842 or 14842.5, as applicable, did not exist.

**California Government Code
Section 11507.5 – 11507.7**

11507.5. The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

11507.6. After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

(a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;

(b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;

(c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;

(d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;

(e) Any other writing or thing which is relevant and which would be admissible in evidence;

(f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

11507.7. (a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to

comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith

attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.

**California Government Code
Sections 14842 - 14843**

14842. (a) 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, shall do all of the following:

(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.

(2) In addition to the amount described in subdivision

(a), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(b) Suspend any person who violates subdivision (a) from transacting any business with the state either directly as a prime contractor or indirectly as a subcontractor, for a period of not less than six months and not more than 36 months. State agencies may reject the bid of a supplier 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 under this chapter, even though the bidder is a business in good standing.

(c) All payments to the state pursuant to paragraph (1) of subdivision (a) shall be deposited in the fund out of which the contract involved was awarded.

(d) All payments to the state pursuant to paragraph (2) of subdivision (a) shall be deposited in the state General Fund.

(e) The small business certification of a business found to have violated subdivision (a) shall be revoked by the department for a period of not less than one year. For an additional or subsequent violation, the period of certification revocation or suspension shall be extended for a period of up to three years. The revocation shall apply to the principals of the business and any subsequent businesses formed by those principals.

(f) Prior to the imposition of any sanctions under this article, a business shall be entitled to a public hearing and to at least five working days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

14842.5. (a) It shall be unlawful for a person to do any of the following:

(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, certification as a small business or microbusiness enterprise for the purposes of this chapter.

(2) Willfully and knowingly 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 certification or denial of certification of any entity as a small business or microbusiness enterprise.

(3) Willfully and knowingly 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 certification as a small business or microbusiness enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this chapter.

(5) Knowingly and with intent to defraud, fraudulently represent certified small business or microbusiness participation in order to obtain or retain a bid preference or a state contract.

(6) Knowingly and with intent to defraud, fraudulently represent that a commercially useful function is being performed by a certified small business or microbusiness in order to obtain or retain a bid preference or a state contract.

(b) Any person who is found by the department to have violated any of the provisions of subdivision (a) is subject to a civil penalty of not more than five thousand dollars (\$5,000).

(c) The department shall revoke the small business or microbusiness certification of any person that violates subdivision (a) for a period of not more than one year, and shall, in addition to the penalties provided for in subdivision (b), be suspended from bidding on, or participating as a contractor, a subcontractor, or a supplier in, any state contract or project for a period of not less than six months nor more than 36 months. However, for an additional or subsequent violation, the period of certification revocation or suspension shall be extended for a period of up to three years. The certification revocation shall apply to the principals of the business and any subsequent businesses formed by those principals.

Any business or person who fails to satisfy the penalties imposed pursuant to subdivisions (b) and (c) shall be prohibited from further contracting with the state until the penalties are satisfied.

(d) If a contractor, subcontractor, supplier, subsidiary, or affiliate thereof, has been found by the department to have violated subdivision (a) and that violation occurred within three years of another violation of subdivision (a) found by the department, the department shall prohibit that contractor, subcontractor, supplier, subsidiary, or affiliate thereof, from entering into a state project or state contract and from further bidding to a state entity, and from being a subcontractor to a contractor for a state entity and from being a supplier to a state entity.

14843. The department may make all rules and regulations consistent with the law for the purpose of carrying into effect the provisions of this chapter. Rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of Chapter 3.5 commencing with Section 11340) of Part 1.

**California Military & Veterans Code
Section 999.51**

(a) A nonprofit veteran service agency shall be eligible for certification as a small business under the Small Business Procurement and Contract Act, as described in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code, and may be granted a small business bid preference if it meets all of the following conditions:

(1) The goods or services meet the specifications and needs of the purchasing agency.

(2) The goods or services are purchased at a fair and reasonable price, as determined by the appropriate state or local agency.

(3) The nonprofit veteran service agency complies with all of the following requirements:

(A) The nonprofit veteran service agency shall employ veterans receiving services from the nonprofit veteran service agency for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to a contract under this section.

(B) The nonprofit veteran service agency agrees to make those elections permitted of any nonprofit corporation under the Federal Insurance Contributions Act (26 U.S.C. Sec. 3103 et seq.) and the Unemployment Insurance Code in order to provide social security and unemployment and disability benefits for its employees, commencing with its first contract or purchase order under this section and continuing thereafter. In the event that the nonprofit veteran service agency ceases to provide those benefits, any existing contract or purchase order under this section with the nonprofit veteran service agency is terminated and no further contracts or purchase orders shall be awarded to that nonprofit veteran service agency for the period of two years after the nonprofit veteran service agency ceases to provide the benefits.

(C) The nonprofit veteran service agency does not commit any unfair labor practices, as defined in the National Labor Relations Act, at Section 158 of Title 29 of the United States Code.

(D) The nonprofit veteran service agency abides by the provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), the Walsh-Healy Public Contract Act (41 U.S.C. Sec. 35 et seq.), and the regulations of the Department of Industrial Relations (8 Cal. Code Regs. 1 et seq.).

(b) For purposes of this section:

(1) "Nonprofit veteran service agency" means a community-based organization that meets the following requirements:

(A) It is exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

(B) Its principal purpose is to provide housing, substance abuse, case management, and employment training services for low-income veterans, disabled veterans, or homeless veterans and their families.

(2) "Direct labor" includes all work required for preparation, processing, and packing of a good, or work directly relating to the performance of a service, excluding supervision, administration, inspection, and shipping.

(3) A veteran receiving services from the nonprofit veteran service agency shall be considered an employee when performing productive work.