

STATEWIDE SB/DVBE ADVOCATE TOOLKIT

Small Business Program

Chapter V



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CHAPTER V SMALL BUSINESS PROGRAM

CALIFORNIA BUSINESSES AND THE SMALL BUSINESS PROGRAM

Thriving California small businesses are critical to California's overall continued financial health. Small businesses are a driving force in California for innovation and employment. In May 2001, Governor Gray Davis issued Executive Order D-43-01 which states: "...California small businesses comprise nearly 98 percent of all businesses in the state, employing more than 50 percent of California's workforce and generating more than half the state's gross domestic product."

In his mandate, Governor Davis made it a priority for California agencies and departments to lead the nation by creating an optimum business environment for all small businesses by giving them equal access to contracting opportunities and the billions of dollars awarded annually through open competition. He also set forth annual SB participation goals of 25 percent; advocacy; outreach; certification and reporting.

In February 2006, through Executive Order S-02-06, Governor Arnold Schwarzenegger, further mandated each agency and department to meet or exceed 25 percent small business participation, identify an Advocate within the department, require DGS and the Small Business Advisory Council to notify each secretary, department director, and executive officer of their individual successes or deficiencies. In the Executive Order he mandated agencies, departments, boards and commissions to: submit an "Implementation and Corrective Action Plan" when falling short of SB mandates; to utilize the Small Business Option; and, to provide web access to bidding opportunities. As well DGS was charged with the responsibility to actively promote certification, help small businesses market their goods and services, and coordinate five small business regional workshops within 12 months.

Many state agencies and departments responded proactively to both Executive Orders immediately implementing small business programs and plans, advocacy, outreach and training. As a result, small businesses throughout California have benefited from the actions of the various state entities to include small business in their procurement efforts through direct award or through collaborative partnerships with prime firms.

In its 2010 Consolidated Annual Report to the Legislature, the Department of General Services reported that state agencies and departments issued 103,371 contracts to small businesses statewide with overall expenditures of \$2.4 billion dollars and helping the state to successfully exceed program mandates with 26.9 percent small business participation.

The following tables below provide an overview of the fundamental elements of the California Small Business program that you, as an advocate, should be aware. Also included are brief explanations, code citations and examples of various preference calculations for both small business and non-small business.

BUSINESS OPPORTUNITY

Under Government Code 14835, The Small Business Act, California state departments and agencies must offer procurement and contracting opportunities to California certified small and micro businesses. Executive Order S-02-06 states: "California has over one million small businesses which employ more than 6.8 million people, this represents 98 percent of all enterprises and comprises 50 percent of California's workforce."

ADVOCACY

Government Code 14846 requires agencies and departments with annual purchasing/contracting activities exceeding \$100,000 to designate a Small Business Advocate. Advocate duties include, but are not limited to:

- Identifying potential SB subcontractors and potential subcontracting opportunities for DWR prime contractors
- Identifying small business focused bid opportunities
- Matching small/micro business services with the appropriate DWR program
- Making information regarding pending solicitations available to the small/micro business community
- Assisting certified small businesses with prompt payment issues

ANNUAL PARTICIPATION GOALS

In accordance with Executive Order, D-43-01 and S-02-06 and PCC 10115 each agency and department shall achieve annual SB participation goals of 25 percent.

A department's Small Business goals are achieved through the award of competitive bids to the small business community for goods, personal services, Information Technology goods and services, and construction services.

REPORTING REQUIREMENTS

- Each department must annually report to the Department of General Services, Office of Small Business and DVBE Services a department's level of Small Business participation.
- Reports are due each August 1st to DGS OSDS. If the department fails to achieve 25 percent small/micro business participation, it must include a Small Business Improvement Plan.
- The report identifies the department's total expenditures for personal services, goods, IT goods and services, and construction services. Total SB dollars expended are calculated against the department's total annual expenditure to obtain the level of Small Business participation achieved.
 - Annual report also includes:
 - SB Option activity
 - Infrastructure Bond Activity
 - Ethnicity, Race and Gender Report

SMALL BUSINESS PREFERENCE

Under Government Code 14835, California certified small and micro-businesses responding to the Department's solicitations may receive a 5 percent preference calculation applied to their bid if they are not the low bidder. Application of the SB calculation preference positions the SB/MB firm in a manner enabling them to compete more directly with non-small business firms giving them greater opportunity for bid award.

The maximum allowable SB preference is \$50,000 and \$100,000 for combined preferences (TACPA/LAMBRA/EZA and DVBE Incentive)

PROMPT PAYMENT ACT

Government Code, Section 927 et seq. The Prompt Payment Program was enacted January 1, 1999 through implementation of AB 2275. The Act entitles certified small businesses, and recognized nonprofit organizations, to collect penalties from state agencies if an undisputed invoice is not paid within 45 days of the invoice receipt date.

Certified small businesses may obtain the Prompt Payment Stamp to identify their invoice as being that of a small business. The rubber-stamped invoice alerts a state agency of the firm's small business/nonprofit status and that special handling is required. Late payment by a state agency results in interest penalties incurred by the agency and it must be automatically included and paid to the supplier.

For information regarding Prompt Payment Act, how businesses obtain a prompt payment stamp, notification of invoice dispute and advocacy, please go to the DGS, Office of Small Business and DVBE Services, Prompt Payment information website at:

www.dgs.ca.gov/pd/Programs/OSDS/PromptPayment.aspx

A few Prompt Payment Rules:

- Payment is due as set forth in the contract (GC 927.1 (a)) and within 45 calendar days
- Payment clock starts the date of receipt of an undisputed invoice by department personnel and is day zero
- A properly disputed invoice stops the clock until the dispute is resolved
- For State Agencies, penalties begin accruing the day after payment is due per contract; if not payment date in the contract on the 31st day of receipt
- For State Controller's Office, penalties begin accruing on the 16th day after receipt of the state agency claim
- For State Agencies, penalties stop accruing the day the claim is submitted to State Controller's or a check is issued from the Revolving Fund
- For SCO, penalties stop accruing the date the warrant is issued

SMALL BUSINESS OPTION

Under Government Code 14838.5 California commodities, IT Goods and Services and personal services between \$5,000 and up to \$249,999.99, and construction services up to \$147,000 may be solicited from California certified small businesses. SB Option solicitations are considered informal.

Rules:

- Businesses solicited must be certified small businesses at the time of the solicitation
- Must receive at least two quotes
- Formal advertising requirements are waived, though departments may if they wish, advertise.
- There are no protest provisions

COMMERCIALLY USEFUL FUNCTION

Whenever a certified small business responds to a department or agencies solicitation as a prime firm or as member of a prime team subcontractor the awarding department must establish the firm meets a commercially useful function. In a bid situation, any prime firm failing any point of the CUF evaluation may not receive a calculation preference during the bid evaluation. Prime firms listing certified small business subcontractors that fail to meet CUF will not be considered for the NSB calculation preference.

Firms selected must perform a “*commercially useful function*” relevant to this contract. The term “small business contractor, subcontractor or supplier” means any person or entity that satisfies the ownership (or management) and control requirements of G.C. 14837.4(A), is certified in accordance with G.C. 14837 and provides services or goods that contribute to the fulfillment of the contract requirements by performing a commercially useful function. As defined in G.C. 14837.4(A), a person or an entity is deemed to perform a “commercially useful function” if a person or entity does *all* of the following:

- Is responsible for the execution of a distinct element of the work of the contract
- Carries out the obligation by actually performing, managing, or supervising the work involved
- Performs work that is normal for its business services and functions
- Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices

A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor’s, subcontractor’s or supplier’s role is limited to that of an extra participant in order to obtain the appearance of disabled veteran business participation.

CUF is evaluated using the DGS PD Bidder Declaration GSPD 05-105 and 05-106 and other forms as established and required by the bidding department.

SB CALCULATION – LOW BID

Under GC 14838.1, the preference calculation is applied by factoring 5 percent of a non-small business low bid total and subtracting this amount from the small business bid total. If this calculation results in the certified small business being low bid, the award is made to the certified small business at their bid price. The preference is applied only for the purpose of determining low bid and does not alter the actual bid price of the small business.

SB CALCULATION – HIGH POINT

In solicitations where an award is to be made to the highest scored bidder based on evaluation factors in addition to price, the preference to small business or micro-business shall be 5 percent of the highest responsible bidder's total score.

NON-SMALL BUSINESS OPPORTUNITY

In an effort to increase small business opportunities and give incentive for prime contractors to foster small business partnerships, the California legislature enacted AB 1084 (January 1, 2002) offering a preference calculation to non-small businesses partnering with certified small businesses when responding to a state agency or department solicitation. Application of the preference may result in the NSB being awarded the bid/proposal. Conditions of the NSB preference calculation include:

- A 5% bid preference for non-small business contractors that identify at *least* 25% certified small business subcontractor participation. .
- Application of the NSB preference cannot be used to displace a certified SB low bidder.
- Requires 5% small business bid preference be applied to bids awarded on cost and points.
- At the time of award, the SB subcontractor identified must possess a current certification through OSDS.
- The selected SB subcontractor services or commodities to be provided must meet the definition and regulations of a “Commercially Useful Function”.

CALCULATING THE NON-SMALL BUSINESS PREFERENCE

Under GC 14838.2 Departments must offer an NSB preference to non-small business bidders that provide for small business or micro-business subcontractor participation.

The preferences may not be awarded to a noncompliant bidder and may not be used to achieve any applicable minimum requirements.

NSB CALCULATION – LOW BID

The NSB calculation preference is applied by factoring 5 percent of the low bid total and subtracting this amount from the bid total submitted by the NSB with the SB subcontractor. If this results in the NSB being low bidder, the award is made to that NSB at their bid price. The NSB preference is applied to determine low bid and does not alter the final bid prices. Application of the NSB Preference may not be used to displace a certified small/micro business bidder.

NSB CALCULATION – HIGH POINTS

The preference shall be up to a maximum 5 percent of the highest responsible bidder's total score, determined according to rules and regulations established by the Department of General Services. The calculation is applied by factoring 5 percent of the bid with the highest point total and adding that amount to that of the NSB firm with the certified SB subcontractor. If this places the NSB firm first with the highest points, the bid is awarded to the NSB at their bid price. Application of the NSB Preference may not be used to displace a certified small/micro business bidder with the highest score.

EXAMPLE SMALL BUSINESS AND NON-SMALL BUSINESS CALCULATIONS**SB AWARD BASED ON LOW BID**

In the example below Bidder C, the certified small business is in rank 3. After application of the SB preference calculation, Bidder C moved up to rank 1 and is awarded the bid

	BIDDER A	BIDDER B	BIDDER C
BID AMOUNT	\$115,000	\$113,000	\$116,000
RANKING	2	1	3
SB STATUS	NO	NO	YES
SB 5% PREFERENCE	NO	NO	YES
PREFERENCE AMOUNT	N/A	N/A	\$5,650
ADJUSTED BID AMOUNT	N/A	N/A	\$110,350
NEW RANKING	3	2	1

SB AWARD BASED ON LOW BID

In this example the Bidder B is a small business and is in rank 1. As a result, no calculation preference is applied to bidder A and the award stands. Bidder C is not considered as they are not certified SB.

	BIDDER A	BIDDER B	BIDDER C
BID AMOUNT	\$115,000	\$113,000	\$116,000
RANKING	2	1	3
SB STATUS	YES	YES	NO
SB 5% PREFERENCE	N/A	N/A	N/A
PREFERENCE AMOUNT	N/A	N/A	N/A

ADJUSTED BID AMOUNT	\$115,000	\$113,000	\$116,000
NEW RANKING	2	1	3

Non-SB AWARD BASED ON LOW BID

In this example Bidder C is an NSB and identifies a certified SB subcontractor. However, the low bid is from Bidder B a certified SB firm and, since the NSB firm cannot displace a certified SB low bidder, the award to the SB stands.

	BIDDER A	BIDDER B	BIDDER C
BID AMOUNT	\$115,000	\$113,000	\$116,000
RANKING	2	1	3
SB STATUS	YES	YES	NO
SB SUBCONTRACTOR	NO	NO	YES
NSB 5% PREFERENCE	N/A	N/A	N/A
PREFERENCE AMOUNT	N/A	N/A	N/A
ADJUSTED BID AMOUNT	\$115,000	\$113,000	\$116,000
NEW RANKING	2	1	3

Non-SB AWARD BASED ON LOW BID

In this example, Bidder B is the low bid; is not a certified SB and does not identify a certified SB subcontractor. Bidder A, a certified SB, is in Rank 3. Bidder C in Rank 2 is an NSB with an SB subcontractor. Application of the SB calculation preference to Bidder A moves Bidder A to Rank 1. However the NSB calculation preference cannot be used to displace a certified SB low bidder, it is not applied, and the award to the SB stands.

	BIDDER A	BIDDER B	BIDDER C
BID AMOUNT	\$115,000	\$113,000	\$114,000
RANKING	3	1	2
SB STATUS	YES	NO	NO
SB SUBCONTRACTOR	NO	NO	YES
NSB 5% PREFERENCE	N/A	N/A	N/A
PREFERENCE AMOUNT	\$5,650	N/A	N/A

ADJUSTED BID AMOUNT	\$109,350	\$113,000	\$116,000
NEW RANKING	1	2	3

SB AWARD BASED ON HIGH POINTS

In the example below Bidder A is Ranked 1 with 1250 points. Bidders B and C are in ranks 2 and 3 respectively and both are certified small businesses. The SB preference is calculated by factoring .05 x 1250 (high point score) which equals 62.5 points. This amount is added to each point score for Bidder B and Bidder C. As a result Bidder B moves into Rank 1 with 1257.5 points, Bidder C remains in Rank 3 with 1177.5 points and Bidder A drops to Rank 2 with 1250 points. Bidder B is awarded the contract.

	BIDDER A	BIDDER B	BIDDER C
POINT SCORE	1250	1195	1115
RANKING	1	2	3
SB STATUS	NO	YES	YES
SB 5% PREFERENCE	NO	YES	YES
PREFERENCE POINTS APPLIED	0 POINTS	62.5	62.5
ADJUSTED POINTS	1250	1257.5	1177.5
NEW RANKING	2	1	3

NSB AWARD BASED ON HIGH POINTS

In the example below Bidder A is Ranked 1 with 1300 points. Bidder A is not a certified small business and has not identified a certified small business subcontractor. Neither bidders B and C are certified small businesses, but they've identified certified small business subs. Each firm receives an additional 65 NSB preference points added to their scores for 1260 and 1200 respectively. After application of the points, Bidder A remains in Rank 1 with 1300 points and is awarded the contract.

	BIDDER A	BIDDER B	BIDDER C
POINT SCORE	1300	1195	1135
RANKING	1	2	3
SB STATUS	NO	NO	NO
SB SUBCONTRACTOR	NO	YES	YES
SB 5% PREFERENCE	NO	YES	YES

PREFERENCE POINTS APPLIED	0 POINTS	65	65
ADJUSTED POINTS	1300	1260	1200
NEW RANKING	3	1	2

NSB AWARD BASED ON HIGH POINTS

In the example below Bidder A, a certified small business, is Ranked 1 with 1300 points. Bidders B and C are NSB Firms with certified small business sub-contractors. The NSB preference calculation cannot be applied because it would displace Bidder A. Bidder A remains the awarded bidder.

	BIDDER A	BIDDER B	BIDDER C
POINT SCORE	1300	1260	1275
RANKING	1	3	2
SB STATUS	YES	NO	NO
SB SUBCONTRACTOR	NO	YES	YES
SB 5% PREFERENCE	NO	YES	YES
PREFERENCE POINTS APPLIED	0 POINTS	N/A	N/A
ADJUSTED POINTS	1300	1260	1275
NEW RANKING	1	3	2
