



California  
Public Utilities  
Commission



Administrative Services Memo 201404-01

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EXPIRATION DATE: Until Superseded

TO: **All CPUC Employees**

REFERENCES: Executive Order D-37-01, D-43-01 & S-02-06; AB21 (2009); Government Codes: 14838.5, 14845-6; M&V Code Section 999 and 2 CCR Sections 1896.60 et seq.; Public Contract Code: 10111; 10115.2, 11015.15, 10472.

SUBJECT: **Small Business (SB), Disabled Veteran Business Enterprise (DVBE) Procurement Policy**

It is the policy of the California Public Utilities Commission to promote and encourage Small Business (SB) and Disabled Veteran Business Enterprise (DVBE) participation in all procurement activities, and as expressed in Government Code (GC) Sections , 14838.5, 14845-6, 10115.2, 11015.15, 10472, and Executive Orders D-37-01, D-43-01 and S-02-06.

All CPUC Divisions and CPUC procurement (IT, Procurement, and Contracts) must comply with this SB/DVBE procurement policy and supporting procurement procedures contained herein.

**Minimum Participation Requirement**

Executive Order D-43-01 states “all State agencies shall make every effort to assure that disabled veteran businesses participate in at least three percent of State contracting annually.

Executive Order S-02-06 states that each agency secretary, department director, and executive officer shall ensure that the State’s procurement and contracting processes are administered in order to meet or exceed the 25 percent small business participation goal.

AB21 (2009) – The State established a DVBE participation goal of at least three percent. The intent of this legislation was that contractors be required to meet the DVBE goals, and eliminated the option that contractors may comply by documenting a good faith effort.

**Procurement Types**

The requirements in this policy apply to all IT and Non-IT procurement requests for Goods and Services that are reported annually to the Department of General Services under Public Contract Code: 10111 and Executive Order D-37-01.

**Procedures**

Divisions will follow the CPUC procurement procedures to acquire goods or services. See Attached Procedures for:

- CPUC IT Procurement
- CPUC Business Services (Non-IT Goods and Services (Except Personal Services Contracts)
- CPUC Contracts Office (Personal Services Contracts)
- CPUC Small Business and DVBE Advocate Services

**LEGAL AUTHORITY**

Government Code (GC) Sections: 14838.5, 14845-6; Public Contract Code: 10111, 10115.2, 11015.15, 10472; M&V Code Section 999; 2 CCR Sections 1896.60 et seq.; and Executive Orders D-37-01, D-43-01 and S-02-06 support this CPUC policy for small business and Disabled Veteran Business Enterprises. AB4X 21 – The State established a DVBE participation goal of at least three percent.

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**Information Technology**  
**IT Goods, Services and Consulting Procurement Process**

**BACKGROUND**

The California Public Utilities Commission (CPUC) IT Resources Management Unit is responsible to ensure that procurement of IT Goods, Services and Consulting complies with all requirements under the State Contracting Manuals (SCM) and government statutes. These requirements include the 3% Disabled Veteran's Business Entity (DVBE) participation goals established under Executive Order D43-01 and 25% Small Business (SB) participation goals established under Executive Order S-02-06.

**INTRODUCTION**

This procedure provides specific guidelines and instructions to CPUC Divisions to ensure that the CPUC meets its statutory small business and DVBE participation requirements as reported on the annual Department of General Services (DGS) reporting requirements under PCC§ 10111.

**OVERVIEW**

The IT Procurement and Contracting section within the Resources Management Unit of the Information Services Branch is responsible for procuring all IT Goods and Services, regardless of dollar value. Purchasing Authority for each State agency is authorized by the Department of General Services (DGS) on an annual basis. Only trained IT procurement officials may procure IT goods, services or consulting contracts. CPUC IT procurement officials will comply with the CPUC Small Business/DVBE Policy, the rules and regulations within the State Contracting Manual Volume III (SCM III), and various other manuals, memos and directives published by oversight agencies.

**IDENTIFICATION OF SB/DVBE VENDORS**

IT is responsible to determine the IT procurement methodology and selection of the contractor based upon costs, technical qualifications, and Small Business/DVBE status.

IT will review the request to ensure the goods or services will not cause any conflicts with our systems then begin the procurement process. Small Businesses and/or DVBEs will be solicited provided they can offer the good or service requested. Awards are typically, but not always, awarded based on lowest cost. Once the solicitation process is complete, a purchase document is completed. The IT Procurement manager monitors the awards to Small Businesses and DVBEs to ensure we achieve the 25% Small Business and 3% DVBE goals. Typically we procure through Small Businesses or DVBEs unless there are none available. If we are under our DVBE goal, when a solicitation is evaluated, if a DVBE falls within 5% of the cost offered by a small business, the DVBE will be awarded the contract.

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**IT GOODS AND SERVICES PROCESS**

**Requests for IT Goods and/or Services (ESSR):** CPUC Divisions requesting IT Goods and/or Services must complete the IT Equipment Supply and Service Request (ESSR) form located on the CPUC Intranet (<http://intranet:8080/itForms.aspx>). The division requestor must complete an ESSR and include an estimated cost, purchase justification, billing codes and approving signatures. Completed ESSR's are sent to the Resource Management Unit in the Information Resources Branch. When submitting ESSR requests, the requesting division does not need to research or provide potential SB/DVBE vendors.

Note: Procurement requests \$1,000,000 or more will be referred to California Technology Agency services.

**IT Consulting Services Process (IT Projects):** Divisions anticipating the need to implement, replace, or update an IT solution in the next fiscal year, must submit a Project Request to the IT Project Management Office. Instructions on how to complete the request form can be found on our Intranet at ([http://intranet:8080/IMSD\\_Content.aspx?id=165](http://intranet:8080/IMSD_Content.aspx?id=165)).

Project requests are due annually on the first Friday in May and are evaluated by an independent committee with representatives from all CPUC divisions. Small Businesses and/or DVBEs will be solicited so long as they can provide the services requested or perform a commercially useful function as a subcontractor. The CPUC typically uses Leveraged Procurement Agreements for these types of contracts and follows any rules on SB/DVBE that may be included in those contracts.

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**Business Services**  
**Non - IT Goods and Services (Except Personal Services Contracts)**

**BACKGROUND**

The California Public Utilities Commission (CPUC) Procurement is responsible to ensure that procurement of non-IT Goods and non-IT Services (Other than Consulting Services) complies with all requirements under the State Contracting Manuals (SCM) and government statutes. These requirements include the 3% Disabled Veteran's Business Entity (DVBE) participation goals established under Executive Order D-43-01 and 25% Small Business (SB) participation goals established under Executive Order S-02-06.

**INTRODUCTION**

This procedure provides specific guidelines and instructions to CPUC Divisions to ensure that CPUC meets its statutory small business and DVBE participation requirements as reported on the annual Department of General Services (DGS) reporting requirements under PCC§ 10111.

**OVERVIEW**

The Procurement Unit within Business Services is authorized by Department of General Services (DGS) to procure non-IT goods and services for California Public Utilities Commission. Purchasing Authority for each State agency is authorized by the Department of General Services (DGS) on an annual basis. Only trained procurement officials may procure non-IT goods and services. CPUC procurement officials will comply with the CPUC Small Business/DVBE Policy, rules and regulations in the State Contracting Manual Volume I (SCM 2), and various other manuals, memos and directives published by oversight agencies.

**IDENTIFICATION OF SB/DVBE VENDORS**

The Procurement Unit is responsible to determine the procurement methodology and selection of the vendor based upon costs, technical qualifications (when applicable), and Small Business/DVBE status.

The CPUC Procurement is responsible to research, identify, and analyze Small Businesses and/or DVBE's that meet requisite requirements to provide the goods and/or services requested. Small businesses and/or DVBEs may be incorporated into a contract agreement as a sub-contractor so long as the SB/DVBE performs a commercially useful function as defined in the State Contracting Manuals published by DGS.

When submitting ESSR requests, the requesting division does not need to research or provide potential SB/DVBE vendors; however, if there are known SB/DVBE vendors, the division may note on the ESSR potential SB/DVBE or other preferred vendors.

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**SMALL BUSINESS / DVBE REQUIREMENTS FOR NON-IT PROCUREMENTS**

For purchases under \$50,000, CPUC Procurement Section will evaluate the cost differences between DVBE/SB contractors and non-DVBE/SB contractors as part of consideration for procurement decisions, the purchase contract will be awarded to the SB /DVBE contractor if the price is justifiable under the practice of “fair and reasonable” costs. Procurement Unit may use a list of qualified Small Business/DVBE vendors for reoccurring procurement requests of non-IT goods and services.

The Procurement Unit will require all Non-IT goods and services contracts between \$50,000 to \$250,000 to have a minimum of 5% DVBE and/or minimum of 25% SB participation.

During the solicitation process, officers will use the Small Business/DVBE option and indicate in the statement of work and on the solicitation document “SB / DVBE Vendors only”; the SB/DVBE certification of bidders shall be verified using the DGS website.

**REQUESTS FOR NON-IT GOODS AND/OR SERVICES (ESSR)**

CPUC Divisions requesting Non-IT Goods and/or Services must complete the Equipment Supply and Service Request (ESSR) form located on the CPUC Intranet at <http://intranet:8080/BusinessForms.aspx>.

The ESSR must be complete and include an estimated cost, purchase justification, billing codes and approving signatures. Completed ESSR’s are sent to the Business Services Procurement Unit. When submitting ESSR requests, it is not necessary to research or provide potential SB/DVBE vendors as that work is the responsibility of authorized procurement staff.

Small Businesses and/or DVBEs will be solicited provided they can offer the good or service requested. Awards are typically, but not always, awarded based on lowest cost. Once the solicitation process is complete, a purchase document is completed.

Once an ESSR has been reviewed and approved by Business Services management, the Business Services Procurement Unit is responsible to (1) determine the procurement methodology based upon the goods and/or services requested and the estimated cost, (2) research, identify, and analyze Small Businesses and/or DVBE’s that meet requisite requirements to provide the goods and/or services requested, (3) create and maintain preferred SB/DVBE vendors for routine or repetitive purchases, and/or (4) validate that any SB/DVBE subcontractor performs a commercially useful function, if applicable.

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**CPUC CONTRACTS OFFICE**  
**PERSONAL SERVICES CONTRACTS**

**BACKGROUND**

The California Public Utilities Commission (CPUC) Contracts Office is responsible to ensure that procurement of personal services contracts complies with all requirements under the State Contracting Manuals (SCM) and government statutes. These requirements include the 3% Disabled Veteran's Business Entity (DVBE) participation goals established under Executive Order D-43-01 and 25% Small Business (SB) participation goals established under Executive Order S-02-06.

**INTRODUCTION**

This procedure provides specific guidelines and instructions to CPUC Divisions to ensure that CPUC meets its statutory small business and DVBE participation requirements as reported on the annual Department of General Services (DGS) reporting requirements under PCC§ 10111.

**OVERVIEW**

The CPUC Contracts Office is authorized by Department of General Services (DGS) to procure Consultant Services Contractors for California Public Utilities Commission. Over 80% of the contracts awarded by the CPUC are Personal Services Contracts. Purchasing Authority for each State agency is authorized by the Department of General Services (DGS) on an annual basis. Only trained procurement officials may procure these services. CPUC procurement officials will comply with the CPUC Small Business/DVBE Policy, the rules and regulations in the State Contracting Manual Volume I & II (SCM I/II), and various other manuals, memos and directives published by oversight agencies.

**CONTRACTS TYPES EXEMPTED**

The following contracts methods are exempt from this procedure: Interagency Agreements, Agreements with other government entities, Joint Powers Authorities (JPA), federally funded contracts, and contracts funded on specifically exempted grants.

**TYPE OF PROCUREMENT**

Due to the procurement options and/or requirements for personal services contracts, the procedures are different based upon both the procurement method and contract award amount.

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**Expert Witness & Legal Contracts**

For Expert Witness and Legal Contracts with a value under \$250,000:

1. As part of the market survey process, the requesting division will research small business and DVBE contractors listed on the Department of General Services Website:  
<http://www.bidsync.com/DPXBisCASB>
2. If only one SB or DVBE contractor can perform the requested services, then the small business or DVBE must be evaluated in the market survey.
3. If more than one SB or DVBE contractor can perform the requested services, then at least, two small business/DVBE contractors must be evaluated in the market survey.
4. The requesting division shall give preference to SB and DVBE contractors, if the small business or DVBE firm can adequately complete the tasks and deliverables under the requested contract.
5. As part of the market survey process, the requesting division must document the market survey process to include a list of all contractors evaluated; the reasons why the contractor was selected; and the reasons why any DVBE and/or Small Business contractors were not selected.

If no certified small business or DVBE contractors can be identified, then the requesting divisions must provide a statement with their contract request form stating the searches conducted and findings.

Note: The CPUC contracts manager may return a contract request back to the Division if there is insufficient documentation to support that the division made a diligent effort to find and award the contract to a small business and/or DVBE contractor.

Expert Witness and Legal Contracts with a value greater than \$250,000 but less than \$1,000,000 must have a minimum: **3% DVBE and 10% SB.**

Expert Witness and Legal Contracts with a value \$1,000,000 or more must have a minimum: **5% DVBE and 25% SB.**

To meet the requirement for contracts greater than \$250,000, Division personnel will follow the same procedures listed “For Expert Witness and Legal Contracts with a value under \$250,000”, and in addition,

- a. As part of the market survey process, the Division project manager must advise all non-DVBE / non-SB contractors of the minimum DVBE/SB requirements to be awarded in the expert witness contract and request the contractor to provide the name(s) of proposed DVBE/SB sub-contractor(s) to meet this requirement.
- b. The Division may choose to limit the market survey to DVBE and/or SB contractors.
- c. The Division may elect to award the contract to a DVBE and/or SB contractor.

**Rules for Contacting Contractors:** The market survey process allows Division personnel to directly contact personal services contractors to evaluate the ability to complete specified work.

**CMAS**

As part of the Request For Offer (RFO) process, the requesting division will research small business and DVBE CMAS contractors listed on the Department of General Services Website:

<https://www.apps.dgs.ca.gov/pd/cmasearch/default.aspx>

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1. If only one Small Business or DVBE contractor can perform the requested services, then the small business or a DVBE must be included in the RFO.
2. If more than one Small Business or DVBE contractor can perform the requested services, then at least, two small business/DVBE contractors must be included in the RFO.
3. The requesting Division shall give preference to small business and DVBE contractors, if the small business/DVBE firm can adequately complete the tasks and deliverables specified in the RFO.

If no certified small business or DVBE contractors can be identified, then the requesting division must provide a statement with their contract request form stating the findings of the search conducted. The CPUC contracts manager may return a contracts request back to the division if there is insufficient documentation to support that the division made a diligent effort to find and award the contract to a small business and/or DVBE contractor.

**Rules for Contacting Contractors:** Divisions must select the contractors to be included using information publicly available and/or within the CMAS search engine. Division personnel shall NOT contact or discuss any procurement details with potential CMAS contractors until the interview and/or contract award process. Because the Request for Offer (RFO) process is an informal bid process, contacting contractor(s) creates an unfair and/or inequitable process.

### **Non-Competitive Bids (NCB)**

Contracts must be competitively bid using the Public Contract Code process, unless there is a legally authorized basis for bid exemption under PCC §10340(b). NCB contracts are included in the annual small business / DVBE report, unless exempt under PCC§ 10111.

If an NCB exemption under PCC §10340(b) is approved by the Department of General Services, then Contractor's small business or DVBE status is immaterial.

**Rules for Contacting Contractors:** After the exemption under PCC §10340(b) is approved by the Department of General Services, Division personnel may contact the selected contractor.

### **Under \$5,000 Contracts**

For purchases under \$5,000, CPUC Project Manager from the Division will evaluate the cost differences between DVBE/SB contractors and non-DVBE/SB contractors as part of consideration for procurement decisions, the purchase contract will be awarded to the SB /DVBE contractor if the price is justifiable under the practice of "fair and reasonable" costs.

As part of the Market Survey process, the requesting Division will research and consider small business and DVBE contractors. SB and DVBE contractors are listed on the Department of General Services Website: <https://www.apps.dgs.ca.gov/pd/emassearch/default.aspx>.



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### Small Business / DVBE Request for Offer

If the intended contract will be less than \$250,000, the CPUC Contracts Office highly recommends that Project Managers request procurement using the **Small Business/DVBE Option** (GC §§ 14838.5; PCC §§ 10335.5(c)(6), 10340(b)(6)).

If the Division elects to use the Small Business/DVBE Option to award a contract, the requesting Division will research small business and DVBE contractors listed on the Department of General Services Website at <http://www.bidsync.com/DPXBisCASB>.

1. The Project Manager must request the small business option –or- a DVBE option on the CRF based upon their research. All contractors must have the DGS certification based upon option used.
2. The Project Manager must identify a minimum of three Small Business contractors –or- three DVBE contractors that can perform the requested services.

Note: It is recommended that five contractors be identified due to the following requirements:

- i. At least two small business or DVBE certified contractors must respond to the RFO, else a formal RFP/IFB must be used.
- ii. No mixing Small Business and DVBE contractors; however, if a contractor has both SB and DVBE certifications, the contractor can be used for both options.

### Advantages of the Small Business / DVBE Option:

- a. The Small Business or DVBE option takes six to eight weeks versus the formal RFP/IFB process which can take four to six months.
- b. The contract award is not subject to a protest.
- c. Division evaluates and justifies the Small Business or DVBE contractors selected from the informal solicitation

For better results, identify five (5) to ten (10) contractors for the RFO because a larger pool of contractors increases the likelihood (a) of finding the best contractor to perform required services, (b) of receiving the minimum number of responses as required under the Small Business/DVBE Option.

**Rules for Contacting Contractors:** Divisions must select the contractors to be included using information publicly available and/or within the CMAS search engine. Division personnel shall NOT contact or discuss any procurement details with any contractors until the interview and/or contract award process. Because the Request for Offer (RFO) process is an informal bid process, contacting contractor(s) creates an unfair and/or inequitable process.

### Formal Competitive Solicitation – Request For Proposal (RFP), Invitation For Bid (IFB)

1. All formal competitive solicitations must include the DVBE incentive and small business preference program.
2. For all formal competitive solicitations \$100,000 or less, the project manager must assess the number of certified DVBE and/or Small Business contractors that can satisfactorily complete the work under the competitive bid. If sufficient DVBE and/or Small Business contractors are identified, the project manager is highly encouraged to: (1) Consider the SB/DVBE procurement option –or- (2) include the small business and DVBE requirements indicated for formal competitive solicitations greater than \$100,000 and less than \$1,000,000.
3. All formal competitive solicitations greater than \$100,000 and less than \$1,000,000 require bidder to include (1) a minimum requirement of 3% awarded to a DVBE contractor; at least 3% of the value of the total contract must be awarded to a DVBE – AND — (2) a minimum requirement for 10% Small

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Business participation; at least 10% of the value of the total contract must be awarded to a small business.

4. All formal competitive solicitations \$1,000,000 or more require the bidder to include (1) a minimum requirement of 5% awarded to a DVBE contractor; at least 5% of the value of the total contract must be awarded to a DVBE – AND — (2) a minimum requirement for 25% Small Business participation; at least 25% of the value of the total contract must be awarded to a small business.

The small business and DVBE requirements may be fulfilled as the prime contractor or by a sub-contractor.

**Rules for Contacting Contractors:** For formal competitive solicitations, Division personnel shall NOT contact or discuss any procurement details with any contractors until the interview and/or contract award process. Under the RFP process, it is the bidder's responsibility to research and submit proposed small business and DVBE sub-contractors.

### **Architect & Engineering (A&E) / California Environmental Quality Act (CEQA) Contracts**

All CEQA contract awards shall include a minimum requirement that 3% DVBE of the total dollar value of the contract DVBE participation.

If a request for qualifications (RFQ) process is used, then the SOQ shall include a 3% DVBE requirement. The contractor will research and select the DVBE contractor. <http://www.bidsync.com/DPXBisCASB>

A&E /CEQA contracts are not reported on the annual DGS small business/DVBE reports.

The small business preference program does not apply to the RFQ process; therefore, there is no small business requirement for A&E contracts.

**Rules for Contacting Contractors:** If a formal RFQ process is used to procure services, Division personnel shall NOT contact or discuss any procurement details with contractors until the interview and/or contract award process. If the approved Qualifying Contractor List (QCL) is used, then Division personnel may contact the selected contractor.

### **Researching Small Business and DVBE Contractors**

If the procurement method requires the Division project manager/requestor to research SB or DVBE contractors, the Project Manager will use the DGS database to determine available contractors that can meet the operational needs of the contract request.

The DGS website can be found at: <http://www.bidsync.com/DPXBisCASB>

If Division Project Managers need assistance to comply with the CPUC SB/DVBE policy and this procedure, the project manager may send a request to the CPUC SB/DVBE Advocate and/or CPUC Contracts Manager to provide DGS certification information and assist with identifying specific contractors in the DGS database.

If the Division Project Manager identifies contractors that might be eligible for DVBE and/or Small Business, the project manager may provide the SB/DVBE contact information to the CPUC SB/DVBE Advocate. The CPUC SB/DVBE Advocate will contact the contractor to provide SB/DVBE certification information through DGS and encourage participation.

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**COMMERCIALLY USEFUL FUNCTION REQUIREMENT**

The commercially useful function requirement applies to all CPUC procurements with Small Business and/or DVBE contractors or sub-contractors.

A DVBE or Small Business sub-contractor must provide commercially useful function as defined under the Mil. & Vet. Code § 999(b)(5)(B), GC § 14837(d)(4), 2 CCR Section 1896.71 and the State Contracting Manual which states as follows:

In evaluating program compliance by the bidder, the awarding agency must review the activities to be performed by any DVBEs proposed to participate in the contract to assure that the DVBE performs a —commercially useful function as defined in SCM the State Contracting Manual.

It is a contractor, subcontractor or supplier that performs a —commercially useful functionl in providing services or goods that contribute to the fulfillment of the contract requirements.

—Commercially useful function is defined as a person or entity doing all of the following: 1) is responsible for the execution of a distinct element of the work of the contract; 2) carries out the obligation by actually performing, managing or supervising the work involved; 3) performs work that is normal for its business services and functions; and 4) is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry standards.

It is not a —commercially useful functionl if the DVBEs role is limited to that of an extra participant in a transaction, contract or project through which funds is passed in order to obtain the appearance of DVBE participation. (Mil. & Vet. Code § 999(b)(5)(B)).

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**ROLE OF THE CPUC SB/DVBE ADVOCATE**

The CPUC Small Business (SB)/Disabled Veteran Owned Enterprise (DVBE) Advocate shall assist CPUC divisions and procurement officers in seeking and identifying SB/DVBE firms to participate in CPUC's procurement activities.

The CPUC SB/DVBE advocate shall encourage and assist current and prospective CPUC supplier SB/DVBE firms to become certified with the California Department of General Services (DGS) and provide these firms with information on the process of certification.

**CPUC SB/DVBE ADVOCATE CONTACT INFORMATION**

Email: [smallbiz@cpuc.ca.gov](mailto:smallbiz@cpuc.ca.gov)  
Telephone: 415-703-5361