

Announcing New Laws – “Commercially Useful Function”

New legislation

Assembly Bill (AB) 669 and Senate Bill (SB) 1008 made various changes to the laws affecting Small Businesses (SBs), microbusinesses and Disabled Veteran Business Enterprises (DVBEs). These new laws will affect how state buyers do business and how the DGS Office of SB and DVBE Certification (OSDC) certifies firm. The laws also added significant sanctions for violators. This document is intended to familiarize contracting professionals and the supplier community with the general requirements of the law.

Specifically, all SBs (including microbusinesses) and DVBEs, at all tiers in the contracting “chain”, must provide a “commercially useful function” in state contracts and purchase orders. Additional requirements also apply to DVBEs that lease equipment to the State.

Both bills are **effective January 1, 2004**. DGS is developing policy to assist in the analysis and implementation of these new laws.

Note: Visit the Procurement Division website to see the impact of both bills to the statutory language at www.pd.dgs.ca.gov/smbus For a full version of both bills, see www.leginfo.ca.gov/bilinfo/

Definition - commercially useful function

Contractors shall provide goods or services that contribute to the fulfillment of the state’s contract requirements by performing a **commercially useful function**, as defined below:

A firm is deemed to perform a commercially useful function if the business does **all** the following:

1. Is responsible for the execution of a distinct element of the work of the contract;
2. Carries out its obligation by actually performing, managing or supervising the work involved;
3. Performs work that is normal for its business services and functions; and
4. Is not further subcontracting a greater portion of the work than would be expected 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 a transaction, contract, or project through which funds are passed in order to obtain the appearance of participation by a certified firm.

Continued on next page

Announcing New Laws – “Commercially Useful Function”,

Continued

Additional related definitions for DVBEs

- **"Broker" or "agent"** means any individual or entity, or any combination thereof, that does not have title, possession, control, and risk of loss of materials, supplies, services, or equipment provided to an awarding department, unless one or more certified disabled veterans has 51 percent ownership of the quantity and value of the materials, supplies, services, and of each piece of equipment provided under the contract.
- **"Equipment"** means any piece of equipment that is used or provided for rental to any state agency, department, officer, or other state governmental entity, including equipment for which operators are provided.
- **"Equipment broker"** means any broker or agent who rents equipment to an awarding department.

Additional requirements for DVBEs renting equipment to the State

- A DVBE that **rents equipment** to an awarding department shall be deemed to be an equipment broker unless one or more disabled veterans has **51-percent ownership of the quantity and the value of each piece of equipment**. If the equipment is owned by one or more disabled veterans, each disabled veteran owner shall, prior to performance under any contract, submit to the awarding department a **declaration** as required by the law.
- A DVBE that rents equipment to an awarding department shall, prior to performing the contract, submit to the awarding department a **declaration** as required by the law
- A DVBE that is a broker or agent and that obtains a contract shall, prior to performing the contract, disclose to the awarding department that the business is a broker or agent. The disclosure shall be made in a **declaration** as required by the law.
- A disabled veteran business enterprise that fails to maintain their eligibility for certification shall immediately notify the awarding department and the administering agency of that failure by filing a **notice of failure** as required by the law.

Continued on next page

Announcing New Laws – “Commercially Useful Function”, Continued

Role of OSDC and buyers

OSDC will review certification applications to determine if applicants provide a commercially useful function. New applicants may be denied certification; existing certification holders may be decertified.

Certification by OSDC **does not** imply that any firm performs a commercially useful function for **all** state contracts that it may seek. For this reason, **buyers will need to examine each transaction** to determine that the potential contractor and all subcontractors perform a commercially useful function for that specific transaction.

Assistance

For assistance, consult the DGS Office of SB and DVBE Services at 916-375-4940 or 800-559-5529 or email osdchelp@dgs.ca.gov
