

# Senate Bill (SB) 605

## Small Business for the purpose of Public Works Certification (SB-PW)

### Frequently Asked Questions for Departments

The following frequently asked questions (FAQs) provide information for State Departments on Small Business for the purpose of Public Works (SB-PW) Certification Program.

#### 1. What is Senate Bill 605?

Senate Bill 605 (Chapter 673, Statute of 2017) was signed by Governor Brown on October 11, 2017 and amended Government Code sections 14837 and 14838 certification provisions under the Small Business Procurement and Contract Act.

Effective January 1, 2019 this bill increases Small Business (SB) 3-year average Gross Annual Receipts (GARs) eligibility threshold for existing SB certification programs to:

- \$15 million for Small Business (SB)
- \$5 million for Microbusiness designation (MB)

The bill also creates a new SB certification category for the purpose of Public Works contracts/projects with the following eligibility thresholds:

- \$36 million GARs averaged over last 3 years.
- 200 employee count in average over the recent four quarters.

#### 2. What is the definition of Public Works as it applies to SB-PW?

##### California Public Contract Code § 1101

- "Public works contract," as used in this part, means an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road, or other public improvement of any kind.

##### California Government Code § 4525

- "Architectural, landscape architectural, engineering, environmental, and land surveying services" includes those professional services of an architectural, landscape architectural, engineering, environmental, or land surveying nature as well as incidental services that members of these professions and those in their employ may logically or justifiably perform.
- "Construction project management" means those services provided by a licensed architect, registered engineer, or licensed general contractor which meet the requirements of Section 4529.5 for management and supervision of work performed on state construction projects.

### 3. What are the differences between the SB certification currently in place and the SB-PW certification?

This chart highlights the differences:

	SB	SB-PW
Average GARs for Last 3 Years	\$15,000,000	\$36,000,000
Employee Count Four Most Recent Quarters	100	200
GAR limit for manufacturers?	No	Yes
Does it have a Microbusiness designation?	Yes	No
Get SB credit for what type of contracts?	All state contracts*	Limited to public works – related state contracts/project**

\*Small Business certification can be used and counted on all types of contracts including public works contracts and/or projects.

\*\*SB-PW certification can only be counted toward SB participation on public works-related contracts/projects.

For additional information visit OSDS Small Business Eligibility Requirements: [www.dgs.ca.gov/pd/Programs/OSDS/SBEligibilityBenefits.aspx](http://www.dgs.ca.gov/pd/Programs/OSDS/SBEligibilityBenefits.aspx)

### 4. Can I still use a certified SB on public works contracts/projects?

Absolutely! You can use a certified SB on any state contracts and/or projects. There is no change in the participation goals and preferences for SB certified firms, as long as the SB also has the required licensing, bonding or other qualifications. Small businesses can use their certification status on any applicable state contracts, including public works. Firms certified as SB-PWs are being added to the pool of certified firms, but only for the public works contracts and/or projects.

### 5. Who determines if a contract is public works?

Each awarding department’s Contracting Official will determine if they have a public works contract and/or project and work with their legal offices, if necessary. Departments should follow their established statutes, regulations and policies on how public works is determined.

### 6. How do I identify SB and SB-PW certification types?

Both small business certification types will be displayed separately under ‘Active Certifications’ in the Cal eProcure public search display. A firm may have one or more certification types on their Supplier Profile. Click [here](#) or visit [www.caleprocure.ca.gov](http://www.caleprocure.ca.gov) to find a certified firm.

### **7. Can I count SB-PW towards the SB goals?**

Yes, SB-PW certified firms will count towards Small Business participation goals, as long as the contracts and/or projects on which they participated in are public works.

### **8. Is there a Microbusiness designation for the SB-PW certification?**

No, there is no microbusiness designation for SB-PW created by Senate Bill 605. The Microbusiness designation is statutorily required as a designation for Small Businesses certification only. A certified Small Business (Micro) can also be certified as a SB-PW.

### **9. Does a small business need to apply for both certification types?**

It is not a requirement that a small business apply for SB-PW certification. However, small businesses have the option to apply for both.

### **10. I am going out for a bid with a public works related contract, do I only search for and send solicitations to certified SB-PW firms?**

No, Contracting Officials must consider both certified SB and SB-PW on their public works contracts and/or projects.

### **11. Can I use SB-PW on contracts using the Small Business option?**

The SB-PW can be utilized on contracts using only the SB option for public works (up to \$314,000) per Government Code section 14838.7. This enables departments to conduct competitive solicitations for public works contracts that target Small Businesses.

For additional information visit:

[www.dof.ca.gov/budget/budget\\_letters/documents/BL18-03.pdf](http://www.dof.ca.gov/budget/budget_letters/documents/BL18-03.pdf)

### **12. Does SB-PW have the same benefits on state contracting as a SB?**

The SB-PW certification is incorporated into Government Code (GC) Sections 14837 and 14738 that govern the SB certification, therefore the new SB-PW certification type is subject to the same participation goals, preference requirements and benefits. However, there are some differences in utilization of such firms, in that SB-PW can only be counted for SB participation on public works contracts and/or projects.

### **13. What happens in the case of a tie between a SB or SB-PW?**

Because they are both small businesses, agencies should identify the process in the solicitation document setting forth how the contract award will be made in the event of a tie.

### **14. Can SB-PW displace SB in case of a SB preference tie breaker?**

No, a SB-PW certified firm will not displace a SB, as they are both considered small businesses. Refer to the department's process for tied bids.

### **15. Do we need to rewrite our department's Small Business/DVBE First Policy?**

Departments with Small Business First Policies will need to amend their policy to include SB-PW.

### **16. Will SB-PW firms be able to bid on non-public works contracts?**

Yes, any responsible bidder can bid on all types of contracts. However, firms certified as SB-PW cannot use their certification for the preferences or other benefits on contracts that are not related to public works. Also, Contracting Officials can only count state contracting dollars awarded to SB-PW certified firms on public works contracts and/or projects towards meeting SB participation goals.

### **17. Do certified SB-PW firms need to perform a Commercially Useful Function (CUF) on contracts?**

Yes, all certified firms must perform a CUF when doing business with the state, regardless of the procurement method, or method of payment. For additional information about CUF visit [www.dgs.ca.gov/pd/Programs/OSDS.aspx](http://www.dgs.ca.gov/pd/Programs/OSDS.aspx) or click on the following hyperlinks:

- [Sample of a CUF Departmental Policy \(PDF\)](#)
- [FAQs regarding CUF \(PDF\)](#)
- [CUF Evaluation and Determination Worksheet \(MS Word\)](#)
- [CUF Brochure \(PDF\)](#)

### **18. Do firms have to register with the Department of Industrial Relations (DIR) to be eligible for certification as a SB-PW?**

No, there is no requirement for firms applying for a SB-PW certification to register with DIR to obtain the certification. However, the awarding department may require suppliers to register their business(es), as a condition of the solicitation.

For information on how to obtain registration through DIR visit [www.dir.ca.gov](http://www.dir.ca.gov).

### **19. Is SB-PW certification applicable to all industry types?**

Yes, a SB-PW certification applies to all industry types. There are no restrictions to the type of firms applying for the certification because public works contracts and projects can include goods, services, information technology, construction, architecture/engineering etc. in the scope of work.

### **20. Do manufacturing firms applying for SB-PW have a Gross Annual Receipts(GARs) eligibility requirement like the other industry types?**

Yes, manufacturers applying for certification as a SB-PW cannot exceed the Gross Annual Receipts (GARs) eligibility requirement of \$36 million as averaged over the last three years. A SB-PW must also have 200 or fewer employees.

### **21. Where can I get additional information about the new certification?**

Please email the Office of Small Business and DVBE Services (OSDS) at [SBPublicWorks@dgs.ca.gov](mailto:SBPublicWorks@dgs.ca.gov) or visit the OSDS website.

Click [here](#) or visit [www.dgs.ca.gov/pd/Programs/OSDS/SBEligibilityBenefits.aspx](http://www.dgs.ca.gov/pd/Programs/OSDS/SBEligibilityBenefits.aspx)