

**Title 2, Division 2, Chapter 3, Subchapter 8
Department of General Services**

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Department of General Services (“DGS”) proposes to repeal Sections 1896, 1896.2, 1896.4, 1896.6, 1896.8, 1896.10, 1896.12, 1896.14, 1896.16, 1896.18, and 1896.20 in Title 2, Division 2, Chapter 3, Subchapter 8 of the California Code of Regulations (CCR) in their entirety. These sections pertain to the definition of terms, preferences, assistance, agents, reports, prequalification, certification, small business joint venture exemption, application processing, sanctions for providing false information and appeal of determination.

In place of the repealed sections, DGS proposes to adopt the new regulations governing the administration of the Small Business Procurement and Contract Act, specifically Sections 1896, 1896.2, 1896.4, 1896.6, 1896.8, 1896.10, 1896.12, 1896.14, 1896.16, 1896.18, 1896.20 and 1896.22. These sections pertain to purpose of the subchapter, authority, definitions, application of the small business preference, computing the small business preference and the non-small business subcontractor preference, substitution of a small business subcontractor, eligibility for certification as a small business, responsibilities of the small business, certification by the department, and appeal of certification denial, decertification, or the imposition of sanctions, and appeal hearings and decisions.

DGS proposes to adopt the new regulations after considering all comments, objections and recommendations regarding the proposed action.

Authority: §14843, Government Code
Chapter 882, Statutes of 2001 (AB 1084, Wesson)

References:

§ 927 et seq, Government Code
§§ 4530 - 4535.3, Government Code
§§ 7070 - 7089, Government Code
§§ 7105 - 7118, Government Code
§ 11370.2, Government Code
§ 11502, Government Code
§§ 14835 - 14843, Government Code
§ 12102, Public Contract Code
§§ 12150 – 12226, Public Contract Code
Title 13 Code of Federal Regulations (CFR), Chapter I, Part 121, Section 121.104
Title 13 CFR, Chapter I, Part 121, Section 121.103
Title 13 CFR, Chapter I, Part 121, Section 121.406

PUBLIC HEARING: DGS will hold a public hearing from 9:00 a.m. to 3:00 p.m. on **Tuesday, March 18, 2003 in the Auditorium of the Department of General Services Headquarters Building, located at 707 Third Street in West Sacramento, California.** The

hearing room is wheelchair accessible. At the hearing, any person may present his or her statement(s) or arguments(s) orally or in writing relevant to the proposed action described in the Informative Digest. DGS requests but does not require that persons who make oral comments at the hearing also submit a written copy of his or her testimony at the hearing.

WRITTEN COMMENT PERIOD: Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to DGS no later than **5:00 p.m. on March 17, 2003**, or at the hearing. DGS will consider only comments received at the DGS office noted below by the deadline, or at the hearing. Submit comments to:

Patricia Jones, Chief
Office of Small Business and Disabled Veteran Business Enterprise (DVBE) Certification
Procurement Division
707 Third Street, Suite 400
West Sacramento, CA 95605
Telephone: (916) 375-4945
Email address: patricia.jones@dgs.ca.gov
FAX: (916) 375-4950
Receptionist: (916) 375-4940 or (800) 559-5529
24-Hour Recording and Mail Request: (916) 322-5060

AMERICANS WITH DISABILITIES ACT (ADA): To comply with the nondiscrimination requirements of the ADA, it is the policy of the State to make every effort to ensure that its programs, activities and services are available to all persons, including persons with disabilities. For persons with a disability needing a reasonable modification to participate in the public hearing or public comment process, please contact Patricia Jones (address and contact information noted above).

The Procurement TTY/TDD (telephone device for the hearing impaired) or California Relay Services Numbers are as follows:

Procurement Division TTY: (916) 376-1891

California Relay Service:

Voice: 1-800-735-2922

TTY: 1-800-735-2929

If reasonable modifications are needed at one of the public hearings, to ensure that the needs can be met, individuals are asked to submit their requests no later than 10 working days prior to the hearing.

CONTACT PERSON: Inquiries or questions concerning this action may be directed to Patricia Jones at (916) 375-4945.

The back-up contact person is Cathy Kurtz, (916) 375-4943.

Questions concerning the substance of the proposed regulations may be addressed to Patricia Jones at (916) 375-4945.

A copy of the proposed text of the regulations, and the Initial Statement of Reasons may be viewed on the Department of General Services, Procurement Division website at <http://www.pd.dgs.ca.gov/default.htm>.

Requests for copies of the proposed text of the regulations, the initial statement of reasons, and the modified text of the regulations, if any, should be directed to:

Office of Small Business and DVBE Certification
PO Box 989052
Sacramento, CA 95798-9052
Receptionist: (916) 375-4940, FAX: (916) 375-4950
24-Hour Recording and Mail Request: (916) 327-9978

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

In establishing the Small Business Procurement and Contract Act, the Legislature declared that *“it is also essential that opportunity is provided for full participation in our free enterprise system by small business enterprises. Further, it is the declared policy of the Legislature that the state should aid, counsel, assist, and protect, to the maximum extent possible, the interests of small business concerns in order to preserve free competitive enterprise and to ensure that a fair proportion of the total purchases and contracts or subcontracts for property and services for the state be placed with such enterprises”* (Government Code 14836).

These regulations are intended to honor the intention and commitment of the Legislature to assist small businesses, by helping them understand the rules established for the administration of the small business program. The proposed regulations provide clarity for businesses wanting to participate in the small business certification program. The existing regulations (that are being repealed) are cumbersome and difficult for small businesses to understand without the assistance of an attorney. The California small business community has voiced their opinion regarding the need for clearer and simpler small business regulations.

These proposed regulations define terms used in the small business program in plain, straightforward language. Small business certification and eligibility requirements are specifically listed in the proposed regulations to assist the business community in understanding how DGS makes its determination on small business certification eligibility. The small business certification application process is explained. In the event small business certification is denied or revoked by DGS, or sanctions are to be imposed, the steps for the appeal process are included to assist businesses in understanding their rights to have DGS’ decision reviewed.

Section 1896 “Purpose of Subchapter”, states the purpose of the subchapter.

Section 1896.2 “Authority”, establishes the authority of DGS to implement the provisions of the Small Business Procurement and Contract Act.

Section 1896.4 “Definitions” defines the following terms as used in the subchapter: affiliate or affiliation, ALJ, appellant, applicant, assignment, awarding department, bid, business, certified small business, department, disabled veteran-owned business, employee, gross receipts, joint venture, local agency, manufacturer, microbusiness, net bid price, non-profit corporation, non-small business, OAH, principal office, responsive bid, solicitation, and state agency.

Section 1896.6 “Application of the Small Business and Non-Small Business Subcontractor Preferences”, explains when the small business bid evaluation preference and the non-small business subcontractor preference will be applied.

Section 1896.8 “Computing the Small Business and Non-Small Business Subcontractor Preferences”, explains how these preferences are computed during bid evaluations.

Section 1896.10 “Substitution of a Small Business Subcontractor”, explains how a non-small business may replace a small business subcontractor if they were awarded the contract based in part on the application of the non-small business subcontracting preference.

Section 1896.12 “Eligibility for Certification as a Small Business”, describes the determining eligibility criteria DGS will use to certify a small business.

Section 1896.14 “Responsibilities of the Small Business”, describes the responsibilities of a business that wishes to be certified as a small business. It also describes the responsibilities of a certified small business during its certification period.

Section 1896.16 “Certification by the Department”, describes the certification by DGS, including certification of businesses that have been certified by another governmental organization that uses the same or more stringent standards and practices as set forth in the Government Code, the certification period, decertification, and the sanctions that may be imposed by DGS if a business obtains or retains a small business certification on the basis of furnishing incorrect or incomplete information to DGS.

Section 1896.18 “Appeal of Certification Denial, Decertification, or the Imposition of Sanctions”, describes the grounds for appealing DGS’s decision to deny a certification, decertify a business, or impose sanctions, and how the appeal shall be lodged.

Section 1896.20 “Appeal Hearings”, describes how the appeals hearings (of certification denials, decertifications, or the imposition of sanctions) will be conducted.

Section 1896.22 “Appeal Decisions”, describes what authority the Administrative Law Judge (ALJ) has following an appeal hearing.

Policy Statement Overview:

The purpose of the proposed regulations is to **simplify** the existing small business regulations, Sections 1896 through 1896.20 in Title 2, Division 2, Chapter 3, Subchapter 8 of the California Code of Regulations. The regulations being repealed and replaced in their entirety are very hard to interpret from the vantage point of the small business community without the aid of an attorney. The proposed regulations define terms used in the small business program in plain, straightforward language. Small business certification and eligibility requirements are specifically listed in these proposed regulations to assist the business community in understanding how DGS makes its determination on small business certification eligibility. The small business certification application process is explained. In the event small business certification is denied or revoked by DGS, the steps for the appeal process are included to assist businesses in understanding their rights to have DGS’s decision reviewed.

In addition, the new regulations address a new preference (the non-small business subcontracting preference established in Chapter 882, Statutes of 2001 [AB 1084, Wesson]), and also the microbusiness designation established in the same statute.

DISCLOSURES REGARDING THE PROPOSED ACTION

DGS has made the following initial determinations:

- This proposed action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Effect on housing costs: None

ASSESSMENT STATEMENT: Adoption of these regulations will not (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.

COST IMPACT ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES:

The DGS is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

FISCAL IMPACTS

- Costs or savings to state agencies or costs/savings in federal funding to the State: None.
- Local mandate: None.
- Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.
- Other nondiscretionary costs/savings imposed upon local agencies: None.

EFFECT ON SMALL BUSINESS: DGS has determined that the proposed regulations affect small business in a positive manner.

CONSIDERATION OF ALTERNATIVES: In accordance with Government Code Section 11346.5, subdivision (a)(13), DGS must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of DGS would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

DGS invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearings or during the written comment period.

AVAILABILITY OF CHANGED OR MODIFIED TEXT: After holding the hearings and considering all timely and relevant comments received, DGS may adopt the proposed regulations substantially as described in this notice. If DGS makes substantive modifications to the originally proposed text, it will make the modified text (with the changes clearly marked) available to the public for at least 15 days before DGS adopts the regulations as revised. Any such modifications will also be posted on the DGS website. Please direct requests for copies of any modified regulations to the attention of Patricia Jones at the address indicated above. DGS will accept written comments on the modified regulations for 15 days after the date on which they are made available.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS: An initial statement of reasons and the text (“express terms”) of the proposed regulations have been prepared and are available from the contact person named in this notice. DGS will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at the Office of Small Business and DVBE Certification, 707 Third Street, 1st Floor, West Sacramento, CA 95605. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the initial statement of reasons, and the proposed text of the regulations in ~~strikeout~~/underline. In addition, the above-cited materials may be accessed on the DGS website at <http://www.pd.dgs.ca.gov/default.htm>.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS: Upon its completion, the Final Statement of Reasons will be available and copies may be requested from Patricia Jones, or by contacting the Office of Small Business and DVBE Certification receptionist, or may be accessed on the website listed above.

DISTRIBUTION OF THIS NOTICE:

Pursuant to Government Code Section 11346.4(a)3-4, this Notice of Proposed Rulemaking will be mailed to all certified small businesses and other interested parties, as soon as it is approved by the OAL for publication.

Pursuant to Government Code Section 11346.4(a)6, as soon as the OAL has approved the publication, the following items will be posted to the Department of General Services, Procurement Division website at <http://www.pd.dgs.ca.gov/default.htm>:

- Notice of Proposed Rulemaking
- Text of the Proposed Regulations (the express terms)
- Initial Statement of Reasons