



Department of Corrections and Rehabilitation  
NOTICE OF CHANGE TO REGULATIONS

<b>Sections:</b> 3000, 3466, and 3468	<b>NCR Number:</b> 21-10	<b>Publication Date:</b> October 15, 2021	<b>Effective Date:</b> To Be Determined
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**INSTITUTION POSTING AND CERTIFICATION REQUIRED**

This Notice announces the proposed amendment of Sections 3000, 3466, and 3468 of the California Code of Regulations (CCR), Title 15, Crime Prevention and Corrections, Division 3, Chapter 1, regarding Disabled Veteran Business Enterprise.

**PUBLIC COMMENT PERIOD**

The public comment period will close on **December 1, 2021**. Any person may submit written comments about the proposed regulations by mail to the California Department of Corrections and Rehabilitation (CDCR), Regulation and Policy Management Branch (RPMB), P.O. Box 942883, Sacramento, CA 94283-0001, or by e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). All written comments must be received or postmarked no later than **December 1, 2021**.

**POSTING**

This Notice shall be posted immediately upon receipt at locations accessible to inmates, parolees, and employees in each department facility and field office not later than five calendar days after receipt. Also, institutions and facilities shall make this Notice available for review by inmates in segregated housing who do not have access to the posted copies, and shall distribute it to inmate law libraries and advisory councils. CDCR Form 621-A (Rev. 05/19), Certification of Posting, shall be returned to RPMB by mail or email. See Department Operations Manual Section 12010.6.7 for posting and certification of posting procedures.

**CONTACT PERSON**

Inquiries regarding this Notice should be directed to S. Pollock, by mail to California Department of Corrections and Rehabilitation, RPMB, P.O. Box 942883, Sacramento, CA 94283-0001, by telephone at (916) 445-2308, or e-mail to [RPMB@cdcr.ca.gov](mailto:RPMB@cdcr.ca.gov). Inquiries regarding the subject matter of these regulations should be directed to Monique Sikich, Office of Business Services, at (916) 255-0523.

*Original Signed By:*

JENNIFER BARRETTO  
Undersecretary, Administration  
California Department of Corrections and Rehabilitation

Attachments

**NOTICE OF PROPOSED REGULATIONS**  
**California Code of Regulations**  
**Title 15, Crime Prevention and Corrections**  
**Department of Corrections and Rehabilitation**

**NOTICE IS HEREBY GIVEN** that the Secretary of the California Department of Corrections and Rehabilitation (CDCR or department), proposes to amend Sections 3000, 3466, and 3468 in Title 15, Division 3, Chapter 1, regarding Disabled Veteran Business Enterprise.

**PUBLIC COMMENT PERIOD**

The public comment period begins **October 15, 2021** and closes on **December 1, 2021**. Any person may submit written comments by mail addressed to the primary contact person listed below, or by email to [rpmb@cdcr.ca.gov](mailto:rpmb@cdcr.ca.gov), before the close of the comment period. For questions regarding the subject matter of the regulations, call the program contact person listed below.

No public hearing is scheduled for these proposed regulations; however, pursuant to Government Code Section 11346.8, any interested person or their duly authorized representative may request a public hearing, no later than 15 days prior to the close of the written comment period.

**CONTACT PERSONS**

Primary Contact

S. Pollock  
Telephone: 916 445-2308  
Regulation and Policy  
Management Branch  
P.O. Box 942883  
Sacramento, CA 94283-0001

Back-Up

Y. Sun  
Telephone: (916) 445-2269  
Regulation and Policy  
Management Branch  
P.O. Box 942883  
Sacramento, CA 94283-0001

Program Contact

Monique Sikich  
Telephone: (916) 255-0523

**AUTHORITY AND REFERENCE**

**Government Code Section 12838.5** provides that commencing July 1, 2005, CDCR succeeds to, and is vested with, all the powers, functions, duties, responsibilities, obligations, liabilities, and jurisdiction of abolished predecessor entities, such as: Department of Corrections, Department of the Youth Authority, and Board of Corrections.

**Penal Code (PC) Section 5000** provides that commencing July 1, 2005, any reference to Department of Corrections in this or any code, refers to the CDCR, Division of Adult Operations. **PC Section 5050** provides that commencing July 1, 2005, any reference to the Director of Corrections in this or any other code, refers to the Secretary of the CDCR. As of that date, the office of the Director of Corrections is abolished.

**PC Section 5054** provides that commencing July 1, 2005, the supervision, management, and control of the State prisons, and the responsibility for the care, custody, treatment, training, discipline, and employment of persons confined therein are vested in the Secretary of the CDCR. **PC Section 5055** provides that commencing July 1, 2005, all powers and duties previously granted to and imposed upon the Department of Corrections shall be exercised by the Secretary of the CDCR. **PC Section 5058** authorizes the Director to prescribe and amend rules and regulations for the administration of prisons and for the administration of the parole of persons. **PC Section 5058.3** authorizes the Director to certify in a written statement filed with Office of Administrative Law that operational needs of the department require adoption, amendment, or repeal of regulation on an emergency basis.

## **INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW**

In July of 2009, Assembly Bill No. 21 of the Fourth Extraordinary Session (ABX-41) was approved by the Governor, and amended Public Contract Code 10115.2. The amendment required that when awarding State contracts to the lowest responsible bidder, the awarding department shall consider the efforts of the bidder to *meet* Disabled Veteran Business Enterprise (DVBE) goals, rather than claim to have made a *good faith effort* to meet DVBE goals. This bill was as a result of many DVBE owners asserting that the “good faith effort” exception created a loophole for bidders to circumvent the State’s contracting system and not comply with the State’s DVBE participation goals, but instead focus on meeting the “good faith effort” standard rather than actually trying to hire or contract with DVBE subcontractors.

Military and Veterans Code (MVC) 999 defines a DVBE, and specifies that a DVBE shall perform a Commercial Useful Function (CUF) when providing services or goods that contribute to the fulfillment of the contract requirements. A CUF is also defined in MVC 999, and specifies the requirements that define what is considered a CUF as it pertains to a DVBE. By specifying the CUF as it pertains to a DVBE contractor, it helps to reduce disingenuous bids from contractors attempting to profit by obtaining State contracts without meeting the necessary DVBE requirements.

### **This action will:**

- Remove “*good faith effort*” language to require that contractors “*meet*” DVBE goals.
- Provide a new definition for the term “*Responsible Bidder*”.
- Provide the specific criteria for what is to be considered as performing a “*Commercially Useful Function*” as it pertains to a DVBE contractor.

## **DOCUMENTS INCORPORATED BY REFERENCE**

None

## **SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS**

These regulations will benefit CDCR staff and the public by providing a current definition for the term “Responsible Bidder” for a better understanding, and to comply with the goals and requirements in the solicitation of State contracts. DVBE-owned businesses may benefit from the proposed regulations by the regulations ensuring that DVBE requirements for State contracts are met, which will promote social and economic equality.

## **EVALUATION OF INCONSISTENCY / INCOMPATIBILITY WITH EXISTING LAWS AND REGULATIONS**

Pursuant to Government Code 11346.5(a)(3)(D), the department has determined the proposed regulations are not inconsistent or incompatible with existing regulations. After conducting a review for any regulations that would relate to or affect this area, the department has concluded that these are the only regulations that concern Disabled Veteran Business Enterprise.

## **LOCAL MANDATES**

This action imposes no mandates on local agencies or school districts, or a mandate which requires reimbursement of costs or savings pursuant to Government Code Sections 17500 - 17630.

## **FISCAL IMPACT STATEMENT**

- Cost or savings to any State agency: *None*
- Cost to any local agency or school district that is required to be reimbursed: *None*
- Other nondiscretionary cost or savings imposed on local agencies: *None*
- Cost or savings in federal funding to the State: *None*

## **EFFECT ON HOUSING COSTS**

The department has made an initial determination that the proposed action will have no significant effect on housing costs.

## **COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES**

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

## **SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT ON BUSINESS**

The department has made an initial determination that the proposed regulations 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, because the proposed regulations place no obligations or requirements on any business.

## **EFFECT ON SMALL BUSINESSES**

The department has determined that the proposed regulations will not affect small businesses. This action has no significant adverse economic impact on small business because they place no obligations or requirements on any business.

## **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT**

The department has determined that the proposed regulation will have no effect on the creation of new, or the elimination of existing, jobs or businesses within California, or effect the expansion of businesses currently doing business in California. The department has determined that the proposed regulation will have no effect on worker safety or the State's environment. These regulations may benefit the welfare of California residents by ensuring social and economic equality for DVBE businesses in obtaining State contracts.

## **CONSIDERATION OF ALTERNATIVES**

The department must determine that no reasonable alternative considered by the department or that has otherwise been identified and brought to the attention of the department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed during the written comment period or at a scheduled hearing should one be scheduled.

## **AVAILABILITY OF PROPOSED TEXT AND INITIAL STATEMENT OF REASONS**

The department has prepared and will make available the text and the Initial Statement of Reasons (ISOR) of the proposed regulations. The rulemaking file for this regulatory action, which contains those items and all information on which the proposal is based (i.e., rulemaking file) is available to the public upon request directed to the department's contact person. The proposed text, ISOR, and Notice of Proposed Regulations will also be made available on the department's website: [www.cdcr.ca.gov](http://www.cdcr.ca.gov).

## **AVAILABILITY OF THE FINAL STATEMENT OF REASONS**

Following its preparation, a copy of the Final Statement of Reasons may be obtained from the department's contact person.

## **AVAILABILITY OF CHANGES TO PROPOSED TEXT**

After considering all timely and relevant comments received, the department may adopt the proposed regulations substantially as described in this Notice. If the department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text, with the changes clearly indicated, available to the public for at least 15 days before the department adopts, amends or repeals the regulations as revised. Requests for copies of any modified regulation text should be directed to the contact person indicated in this Notice. The department will accept written comments on the modified regulations for at least 15 days after the date on which they are made available.

## TEXT OF PROPOSED REGULATIONS

In the following text, ~~strikethrough~~ indicates deleted text; underline indicates added text.

### California Code of Regulations, Title 15, Division 3, Adult Institutions, Programs, and Parole

#### Chapter 1. Rules and Regulations of Adult Operations and Programs

##### Article 1. Behavior

##### 3000. Definitions

[Section 3000 is amended to alphabetically merge the definitions below with those that exist in the regulations]

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~~Responsible Bidder means, in addition to other State contracting requirements, a bidder who has either met the disabled veteran business enterprise goal or who has demonstrated that a good faith effort was made to meet the goal~~

Responsible Bidder means, a bidder that is compliant with the Disabled Veteran Business Enterprise (DVBE) program requirements as defined in Military and Veterans Code section 999, and is responsive to all requirements for a DVBE, including a commercially useful function being performed by the DVBE.

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~~Good Faith Effort means a concerted effort on the part of a potential contractor to seek out and consider disabled veteran owned and operated business enterprises as potential contractors, and/or subcontractors in order to meet the program participation goals.~~

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Disabled Veteran Business Enterprise (DVBE) means a business concern as defined in Military and Veterans Code section 999(~~g~~).

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Certification means that a business concern has obtained verification that it meets the definition of disabled veteran business enterprise pursuant to Military and Veterans Code section 999(~~g~~) from an agency that has been authorized by law to issue such certification.

Note: Authority cited: Sections 243(f)(4), 2717.3, 3000.03, 5058, 5058.3 and 1170.05, Penal Code; Section 10115.3(b), Public Contract Code; and Sections 4525(a), 4526 and 14837, Government Code. Reference: Sections 186.22, 243, 314, 530, 532, 600, 646.9, 653, 832.5, 1170.05, 1203.8, 1389, 2080, 2081.5, 2600, 2601, 2700, 2717.1, 2717.6, 2932.5, 3003.5(a), 3020, 3450, 3550, 4570, 4576, 5007.7, 5009, 5050, 5054, 5068, 7000 et seq., 11180 and 11191, Penal Code; Sections 1132.4, 1132.8 and 1203(b)(1), Labor Code; Sections 10106, 10108, 10108.5, 10115, 10115.1, 10115.2, 10115.3 and 10127, Public Contract Code; Section 999, Military and Veterans Code; Section 391, Code of Civil Procedure; Section 297.5, Family Code; Sections 8550, 8567, 12838 and 12838.7, Government Code; Governor's Prison Overcrowding State of Emergency Proclamation dated October 4, 2006; *In re Bittaker*, 55 Cal.App. 4th 1004, 64 Cal. Rptr. 2d 679; Section 11007, Health and Safety Code; *Madrid v. Cate* (USDC ND Cal. C90-3094 TEH); *Sassman v. Brown* (E.D. Cal. 2015) 99 F.Supp.3d 1223; *Mitchell v. Cate*, USDC ED 2:08-CV-01196-TLN-EFB; *In re Garcia* (2012) 202 Cal.App.4th 892; ~~and *Quine v. Beard*, No. C 14-02726 JST; and ABX4-21.~~

## **Subchapter 5. Personnel**

### **Article 8. Disabled Veteran Business Enterprise Program**

**[Section 3465 is unchanged.]**

**[Section 3466 is amended to read:]**

#### **3466. Disabled Veteran Business Enterprise Bid and Sole Source Requirements.**

(a) Within the time frames specified by the department's bid or sole source package, potential contractors shall be required to provide the department with either (1) or (2) below:

(1) Documentation, as required in the department's bid or sole source package, that they have met the disabled veteran business enterprise goal established in the respective package which shall include, but not be limited to, the names of their subcontractors; certification pursuant to section 3467; and dollar amounts of the subcontracts.

(2) Documentation, as required in the department's bid or sole source package pursuant to section 3468 ~~of their good faith effort~~ as a responsible bidder to meet the disabled veteran business enterprise goal established in the department's bid or sole source package.

(b) For the purpose of this article, a disabled veteran business enterprise must perform a ~~€~~Commercially ~~u~~Useful ~~f~~Function (CUF). A disabled veteran business enterprise is considered to be performing a ~~commercially useful function~~ CUF when it meets ~~both~~ all of the following criteria:

~~(1) The business concern is responsible for the execution of a distinct element of the work of the contract; carrying out its obligation by actually performing, managing, or supervising the work involved; and performing work that is normal for its business services and functions.~~

~~(2) The business concern is not further subcontracting a greater portion of the work than would be expected by normal industry practices.~~

(1) Executes 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.

(4) Is responsible, with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing, if applicable, and making payment.

(5) Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

(A) A contractor, subcontractor, or supplier will not be considered to perform a CUF 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 a disabled veteran business enterprise participation.

Note: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115, 10115.2 and 10115.3, Public Contract Code; Section 999, Military and Veterans Code; and ABX4-21.

**[Section 3467 is unchanged, but is shown for reference purposes.]**

### **3467. Certification of a Disabled Veteran Business Enterprise.**

(a) As specified in the department's bid or sole source package, potential contractors shall be required to provide the department with certification documentation that a business concern is certified as a disabled veteran business enterprise as defined in Section 3000.

Note: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 2050-2053 and 10115.1, Public Contract Code.

**[Section 3468 title heading is amended to read:]**

### **3468. ~~Good Faith Effort~~ Responsible Bidder Documentation.**

**[Section 3468 initial paragraph is amended to read:]**

A potential contractor shall be considered to ~~have made a good faith effort be a responsible bidder~~ when ~~he/she~~ they submits, within specified time limits, documentary evidence, as required in the department's bid or sole source package, that all of the following actions were taken:

(a) Contact was made with the department to identify disabled veteran business enterprise business concerns.



(b) Contact was made with other federal and state agencies and local disabled veteran business enterprise organizations to identify disabled veteran business enterprises.

(c) Advertising was published in trade papers and disabled veteran business enterprise focus paper, as specified in the bid or sole source package, unless time limits imposed by the department did not permit such advertising. Trade papers and disabled veteran business enterprise focus papers, as defined in section 3000, ~~must~~ shall be acceptable to the department.

(d) Invitations to bid were submitted to potential disabled veteran business enterprise contractors.

(e) Bids submitted by disabled veteran business enterprises were fairly considered.

Note: Authority cited: Section 5058, Penal Code; and Section 10115.3(b), Public Contract Code. Reference: Sections 10115.2-10115.4, Public Contract Code; and ABX4-21.

**[Section 3469 is unchanged.]**

## INITIAL STATEMENT OF REASONS

The California Department of Corrections and Rehabilitation (CDCR or department) proposes to amend the California Code of Regulations (CCR), Title 15, Division 3, sections 3000, 3466, and 3468, concerning Disabled Veteran Business Enterprise.

The Disabled Veteran Business Enterprise (DVBE) program was established in 1989 through the enactment of the California Military and Veterans Code (MVC) 999 and Public Contract Code (PCC) 10115. The program's purpose is twofold: 1) it provides certified DVBE-owned businesses with greater opportunity to compete for a portion of the billions of dollars awarded annually through either direct award or through subcontracted efforts, and 2) to promote self-reliance for California's disabled veterans by offering veterans the opportunity to gain experience in business.

Currently, the CCR, Title 15, Division 3 definition for the term "Responsible Bidder" includes language which refers to "Good Faith Effort" (GFE). The GFE language was abolished in July 2009 due to the passage of Assembly Bill 21 of the Fourth Extraordinary Session (ABX4-21), Chapter 19, Statute of 2009. The GFE justification was previously required when a bidder was unable to meet the DVBE participation goal in a State contract solicitation. Prime contractors had previously used the GFE option to justify the absence of DVBE subcontractors when bidding on State contracts, claiming that a "good faith effort" had been made to identify and attain DVBE subcontractors. ABX4-21 eliminated the GFE language for the means of meeting DVBE requirements. This was due to numerous DVBE owners asserting that the GFE exception created a loophole for bidders to game the State's contracting system and not comply with the State's DVBE participation goals. DVBE owners claimed that many bidders focused on meeting the GFE standard rather than actually trying to hire or contract with DVBE subcontractors. The intent of this bill is to ensure that a fair proportion of State contracts for commodities, supplies, technology, property, and services are actually awarded to State-certified DVBEs. ABX4-21 amended section 10115.2 of the Public Contract Code to require that if a contract solicitation contains a DVBE participation goal, then departments must award contracts to the lowest responsible bidder who meets the DVBE participation goal. The GFE provision no longer applies under the new statute, and contractors must meet the requirements of the amended Public Contract Code per ABX4-21. For consistency and compliance with changes made per ABX4-21, it is necessary to revise language for the definition of "Responsible Bidder" in order to provide a correct and current definition. Additionally, it is necessary to delete the definition for the term "Good Faith Effort" to remove any confusion, as this provision no longer applies to DVBE contracts.

In addition, CCR, Title 15, Division 3, section 3466 currently references the language "good faith effort," and provides information stating that a disabled veteran business enterprise must perform a Commercially Useful Function (CUF). A disabled veteran business enterprise is considered to be performing a CUF when it meets specific criteria, as outlined in the proposed regulations, and as authorized per MVC 999. Performing a CUF is a critical requirement for all California-certified firms (Small Business and DVBE) that do business with the State (Government Code section 14837 and MVC 999), this helps to ensure that the properly contracted contractor (i.e. DVBE) is actually performing

the job. Revisions to this section are necessary to remove the “good faith effort” language, and to properly define and specify the CUF criteria that is to be considered as “performing a commercially useful function,” because a contractor, subcontractor, or supplier will not be considered to be performing 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 meeting disabled veteran business enterprise participation. These changes are necessary to provide clarity and understanding to staff and contractors interested in providing bids on State contracts, and are authorized under MVC 999. By providing this language, it will help to reduce disingenuous bids from contractors attempting to profit by obtaining State contracts without meeting the necessary DVBE requirements.

Assembly Bill 21 of the Fourth Extraordinary Session (ABX4-21), Chapter 19, Statute of 2009 can be referenced at the following web link:

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=200920104AB21](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=200920104AB21)

### **CONSIDERATION OF ALTERNATIVES:**

The department must determine that no reasonable alternative considered, or that has otherwise been identified and brought to the attention of the department, would be more effective in carrying out the purpose for which this action is proposed, would be as effective and less burdensome to affected private persons than the action proposed, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

Currently, no reasonable alternatives have been brought to the attention of the department that would alter the department's initial determination.

Interested persons are accordingly invited to present statements or arguments with respect to any alternatives to the proposed changes at the scheduled hearing or during the written comment period.

### **ECONOMIC IMPACT ASSESSMENT:**

The department believes there will be no significant economic impact with the proposed regulations. The revisions will ensure that contractors meet the DVBE participation goals, rather than allow for the possibility of them not meeting the DVBE goals. At this time it is not possible for the department to predict how the proposed regulations will affect future DVBE contracts, however the department believes any potential impact will be nominal.

In accordance with Government Code section 11346.3(b), the department has made the following assessments regarding the proposed regulations:

### **Creation of New or the Elimination of Existing Jobs within the State of California**

The department believes the proposed regulations will have no impact on the creation of new, or the elimination of existing jobs within California because the proposed regulations only impact requirements for DVBE contracts with the state of California, and any anticipated impact will be nominal.

### **Creation of New, Expansion, or the Elimination of Existing Businesses Currently Doing Business in the State of California**

The department believes the proposed regulations will not have an impact on the creation of new, expansion, or the elimination of existing businesses currently doing business in California as the proposed regulations only impact requirements for DVBE contracts with the state of California, and any anticipated impact will be nominal.

### **Benefits to the Health and Welfare of California Residents, Worker Safety, and the State's Environment**

The department has determined the proposed regulations may benefit the welfare of California residents by ensuring that DVBE-owned businesses are able to earn contracts with the state of California. The department has determined the proposed regulations will not affect the health of California residents, worker safety, or the State's environment.

### **Significant Adverse Economic Impact on Business**

The department has made an initial determination the proposed regulations will not have a significant statewide adverse economic impact on business, including the ability of California businesses to compete with businesses in other states, because the proposed regulations only impact requirements for DVBE contracts with the state of California, and any anticipated impact will be nominal.

### **BENEFITS OF THE REGULATIONS:**

These regulations will benefit CDCR staff and the public by providing a current definition for the term "Responsible Bidder" for a better understanding, and to comply with the goals and requirements in the solicitation of State contracts. DVBE-owned businesses may benefit from the proposed regulations by the regulations ensuring that DVBE requirements for State contracts are met, which will promote social and economic equality.

### **MATERIALS RELIED UPON:**

The department has not relied upon any technical, empirical, or theoretical report, study, or similar document.

**SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(b)(1):**

**Section 3000 is amended** to provide a new definition for the term “Responsible Bidder.” This language is necessary to remove language which was abolished per ABX4-21, and to provide a current definition. The definition for the term “Good Faith Effort” is deleted as this language no longer applies to DVBE contracts. This will provide consistency with changes made per ABX4-21 and help to remove any confusion regarding DVBE contracts. The definitions for the terms “Disabled Veteran Business Enterprise” and “Certification” are updated to provide the “DVBE” acronym for consistency within the CCR, and correct the reference to the Military and Veterans Code.

**Section 3466 is amended** to replace language which referred to “of their good faith effort” with “as a responsible bidder,” in order to comply with the changes made per ABX4-21, as stated above. Additionally, this section is re-organized to provide better clarity by separating out the distinct Commercially Useful Function (CUF) criteria. CUF criteria is added in this section regarding the business concerns for a DVBE performing a CUF. This will correct the previous language which erroneously omitted one of the CUF criteria. Language now provides the correct criteria for what is to be considered a CUF. The activities for performing a CUF are amended to include: responsibility with respect to products, inventories, materials, and supplies required for the contract, for negotiating price, determining quality and quantity, ordering, installing (if applicable), and making payment. Also, new language is added to specify that a contractor, subcontractor, or supplier will not be considered to perform a CUF 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 a DVBE participation. This language is necessary because performing a CUF is a critical requirement for all California-certified firms (Small Business (SB) and DVBE) that do business with the State, whether as prime contractors, subcontractors, or suppliers of goods and services. CUF requirements are in place to assure that no SB or DVBE is used as a pass-through or an extra participant in a State contract or procurement to create the appearance of SB or DVBE participation in order to meet bid requirements.

**Section 3468 is amended** to replace the title heading from “Good Faith Effort Documentation” to “Responsible Bidder Documentation” as a result of the changes made per ABX4-21. Additionally, language in this section which stated “have made a good faith effort” is replaced with “be a responsible bidder.” These changes provide consistency and compliance with the changes which are necessary as a result of ABX4-21, which removed the option for contractors to claim a “good faith effort” for obtaining DVBE contractors on State contracts that require DVBE participation. Other minor grammatical and punctuation corrections are made for corrective purposes, and the pronoun “he/she” is replaced with “they” for current conventional use of pronouns in regulations.