

**State of California  
Office of Administrative Law**

**In re:**  
**Department of Corrections and  
Rehabilitation**

**Regulatory Action:**

**Title 15, California Code of Regulations**

**Amend sections: 3000, 3466, 3468**

**NOTICE OF APPROVAL OF REGULATORY  
ACTION**

**Government Code Section 11349.3**

**OAL Matter Number: 2022-0126-01**

**OAL Matter Type: Regular (S)**

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This action amends existing regulations on contracting with Disabled Veteran Business Enterprises to align with underlying statutory changes.

OAL approves this regulatory action pursuant to section 11349.3 of the Government Code. This regulatory action becomes effective on 7/1/2022.

Date: March 10, 2022



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Eric Partington  
Senior Attorney

For: Kenneth J. Pogue  
Director

Original: Kathleen Allison, Secretary  
Copy: Sarah Pollock

NOTICE PUBLICATION/REGULATION SUBMISSION

STD. 400 (REV. 10/2019)

REGULAR

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-2021-1004-03</b>	REGULATORY ACTION NUMBER <b>2022-0126-01 S</b>	EMERGENCY NUMBER
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For use by Office of Administrative Law (OAL) only

OFFICE OF ADMIN. LAW  
2022 JAN 26 PM 1:50

ENDORSED - FILED  
in the office of the Secretary of State  
of the State of California

MAR 10 2022

1:41 PM

NOTICE	REGULATIONS
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AGENCY WITH RULEMAKING AUTHORITY  
California Department of Corrections and Rehabilitation

AGENCY FILE NUMBER (if any)  
20-47

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	ACTION ON PROPOSED NOTICE	NOTICE REGISTER NUMBER	PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Disabled Veteran Business Enterprise	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT
TITLE(S)	AMEND
15	REPEAL

3000, 3466, and 3468

3. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Other (Specify)		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100 )

Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))  Effective on filing with Secretary of State  \$100 Changes Without Regulatory Effect  Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

Department of Finance (Form STD. 399) (SAM §6660)  Fair Political Practices Commission  State Fire Marshal

Other (Specify)

7. CONTACT PERSON Sarah Pollock	TELEPHONE NUMBER 916 445-2308	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional) sarah.pollock@cdcr.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE Jennifer Barretto	DATE 1/25/2022
TITLE OF SIGNATORY JENNIFER BARRETTO, Undersecretary, Administration	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

MAR 10 2022

Office of Administrative Law

## TEXT OF ADOPTED 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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\*

Certification means documentary evidence that a business concern has been certified as a ~~obtained verification that it meets the definition of~~ Ddisabled Vveteran Bbusiness Eenterprise pursuant to Military and Veterans Code section 999(~~g~~) from an agency that has been authorized by law to issue such certification.

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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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~~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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~~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 DVBE program requirements in Military and Veterans Code section 999 and responsive to all requirements for a DVBE, including a commercially useful function being performed by the DVBE.

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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.

## **Subchapter 5. Personnel**

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

#### **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~~DVBE 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, of their efforts as a responsible bidder pursuant to section 3468 ~~of their good faith effort~~ to meet the ~~disabled veteran business enterprise~~DVBE goal established in the department's bid or sole source package.

(b) For the purpose of this article, a ~~disabled veteran business enterprise~~DVBE must perform a ~~c~~Commercially ~~u~~Useful ~~f~~Function (CUF). A ~~disabled veteran business enterprise~~DVBE 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.

(c) 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.

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; and Section 999, Military and Veterans Code.

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

A potential contractor shall be considered ~~to have made a good faith effort~~ 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~~DVBE business concerns.

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

(c) Advertising was published in trade papers and ~~disabled veteran business enterprise~~DVBE focus papers, 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~~DVBE 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~~DVBE contractors.

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

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

## **FINAL STATEMENT OF REASONS**

The Initial Statement of Reasons (ISOR) is incorporated by reference.

### **UPDATES TO THE INITIAL STATEMENT OF REASONS:**

On October 15, 2021, the Notice of Proposed Regulations for Disabled Veteran Business Enterprise was published, which began the public comment period. The department's Notice of Change to Regulations (NCR) #21-10 was also mailed the same day to individuals who had requested to be on the department's mailing list for regulation changes. In addition, they were posted on the California Department of Corrections and Rehabilitation (CDCR) internet website, and copies posted in CDCR institutions. The department received two written comments which are included below under *Summaries and Responses to the Written Public Comments Received During the Initial Comment Period*. Per commenter request, a teleconference public hearing was held on December 15, 2021. There were no commenters at the teleconference public hearing.

### **DETERMINATION:**

The department has determined that no alternative considered 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 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, than the action proposed. No such alternatives were proposed or brought to the department's attention during the adoption of this rulemaking action. This determination was reached by a consensus of the department's Office of Business Services.

Except as set forth and discussed in the summary and response to the comments received, no other alternatives have been proposed or otherwise brought to the department's attention that would alter the department's decision.

### **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.

### **SUMMARIES AND RESPONSES TO THE WRITTEN PUBLIC COMMENTS RECEIVED DURING THE INITIAL COMMENT PERIOD:**

#### **Commenter #1:**

**Comment 1A:** Commenter contends that the addition to CCR, Section 3466(b)(2) and (4) does not contain any enforcement language for DVBE participants whom utilize their unique advantage during the contract bidding process to obtain a state contract and later refuse to perform a Commercially Useful Function (CUF). Language should be included

to initiate proceedings for the removal of DVBE participants who refuse to perform a CUF, and allow the State to award a contract to the next DVBE participant when the current contract holder refuses to perform a CUF.

**Accommodation:** None.

**Response 1A:** California Code of Regulations, Title 2, section 1896.73 provides a process to request for a DVBE subcontractor substitution when a DVBE subcontractor is unable to perform the work originally stated.

In addition, penalties are applicable to any person who violates the provisions of Government Code (GC) Section 14842.5 and/or Military and Veterans Code (MVC) Section 999.9(a), including SBs, DVBEs, large noncertified businesses, their principals and business affiliates, and state government employees. Specifically, MVC 999.9(a)(6) and GC 14842.5(a)(6) make it unlawful to fraudulently represent CUF in order to obtain a contract. Sanctions/penalties include:

- Revoke SB and/or DVBE certification for a minimum of five to 10 years
- Suspend firms (certified and non-certified) from doing business with the state for three to 10 years
- Refer to Attorney General for civil action

These violations are a misdemeanor

- First violation: \$10,000 – \$30,000
- Second and subsequent violations: \$30,000 – \$50,000/each
- Pay all costs incurred by state and attorney's fees
- Jail up to six months, and/or up to \$1,000 fine

Report CUF concerns and/or file a complaint at [SB.DVBECOMPLIANCE@dgs.ca.gov](mailto:SB.DVBECOMPLIANCE@dgs.ca.gov) or (916) 375-5936.

**Comment 1B:** Commenter relays his personal experience with a DVBE participant who has been contracted to provide food services at a prison. Commenter states the DVBE contractor does not participate in contractually obligated quarterly meetings with the Warden and members of the Inmate Advisory Council. Commenter believes this means the DVBE contractor is not performing a CUF. The DVBE contractor refuses to negotiate lower food prices to those he serves, as is required by CCR, section 3466(b)(4), and has continually used his advantage to price-gauge those the State has allowed him to serve.

**Accommodation:** None.

**Response 1B:** See Response to Comment 1A.

**Commenter #2:**



**Comment 2A:** Commenter requests a public hearing, pursuant to Government Code Section 11346.8.

**Accommodation:** Full accommodation.

**Response 2B:** The department conducted a teleconference public hearing on December 15, 2021.