

Office of Small Business and DVBE Services (OSDS)
NOTICE OF APPEAL – Disabled Veteran Business Enterprise

Instructions

1. Complete the Notice of Appeal form.
2. Prepare a detailed written statement of facts supporting the appeal.
3. Submit the Notice of Appeal and written statement within 30 calendar days from the date of the notice by mail or facsimile transmission to:

Department of General Services, Office of Small Business and DVBE Services
ATTN: Compliance and Quality Assurance Manager
707 Third Street, 1st Floor, Rm. 400 MS 210, West Sacramento, CA 95605
Facsimile Number (916) 376-4229

Appellant's Information

Business Name of Appellant

OSDS Certification Number

Mailing Address

Appellant (Owner/Officer)

City, State, and Zip Code

(____)_____
Telephone Number

Counsel's Information (if applicable):

Name of Counsel

Name of Law Firm

Mailing Address of Law Firm

(____)_____
Telephone Number of Law Firm

City, State, and Zip Code

I have reviewed a copy of GC §§ 11507.5 - 11507.7, 2 CCR § 1896.95, M&VC 999, and a copy of this Notice of Appeal. I hereby submit an appeal to the decision rendered by the OSDS.

Signature of Appellant

Date

Printed Name of Appellant

**Office of Small Business and DVBE Services (OSDS)
Appeal Process – DVBE Program**

California Code of Regulations, Title 2, Section 1896.95 Appeal of Certification Denial or Revocation, and/or Suspension from Contracting Activities

Decisions to deny or revoke certifications, or to impose monetary penalties, sanctions, or suspensions from contracting activities may be appealed. Upon receipt of an appeal, OSDS will determine jurisdiction. An appeal must establish the decision was in error.

(a) Denials, revocations, monetary penalties and suspensions or other sanctions shall become final unless an appeal is received within 30 calendar days from the date of the notice. The Director or designee may grant additional time for appeal submission when extenuating circumstances apply.

(b) The appeal shall be in writing, signed, dated and include a detailed written statement of the facts that support grounds for the appeal as subdivision (c) requires.

(c) Grounds for appeal shall be:

(1) The applicant met the requirements for certification and therefore should have been certified based upon the request for certification, supporting documents and records at the time of the decision.

(2) The business meets the requirements for certification and therefore should remain certified based upon the certification file and records at the time of the decision. In the case of discontinuance, the restoration of certification occurs upon satisfactory submission of remediating documentation or information.

(3) Sanctions should not be imposed, because one or more of the conditions set forth by Military and Veterans Code 999.9 subdivisions (a), (c) or (d) or Government Code §§ 14840, 14842, 14842.5, as applicable, did not exist to warrant the action.

(d) Appeals shall be withdrawn and a new request for certification may be required when an appellant provides new information that may change the certification decision or invalidates the determination being challenged on the basis of newly available information.

(e) There are no grounds for appeal in any of the following situations:

(1) Frivolous appeal.

(2) Failure to timely appeal a decision.

(3) Failure to submit complete information by the specified date of a written request.

(4) Submission of information after the decision.

(f) The DGS Director or designee shall dismiss appeals based on § 1896.95(e) and notify the DVBE. The decision shall be final.

(g) The OSDS shall forward appeals to the Office of Administrative Hearings

**California Government Code
Section 11507.5 – 11507.7**

Government Code Section 11507.5:

The provisions of Section 11507.6 provide the exclusive right to and method of discovery as to any proceeding governed by this chapter.

Government Code Section 11507.6:

After initiation of a proceeding in which a respondent or other party is entitled to a hearing on the merits, a party, upon written request made to another party, prior to the hearing and within 30 days after service by the agency of the initial pleading or within 15 days after the service of an additional pleading, is entitled to (1) obtain the names and addresses of witnesses to the extent known to the other party, including, but not limited to, those intended to be called to testify at the hearing, and (2) inspect and make a copy of any of the following in the possession or custody or under the control of the other party:

- (a) A statement of a person, other than the respondent, named in the initial administrative pleading, or in any additional pleading, when it is claimed that the act or omission of the respondent as to this person is the basis for the administrative proceeding;
- (b) A statement pertaining to the subject matter of the proceeding made by any party to another party or person;
- (c) Statements of witnesses then proposed to be called by the party and of other persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, not included in (a) or (b) above;
- (d) All writings, including, but not limited to, reports of mental, physical and blood examinations and things which the party then proposes to offer in evidence;
- (e) Any other writing or thing which is relevant and which would be admissible in evidence;
- (f) Investigative reports made by or on behalf of the agency or other party pertaining to the subject matter of the proceeding, to the extent that these reports (1) contain the names and addresses of witnesses or of persons having personal knowledge of the acts, omissions or events which are the basis for the proceeding, or (2) reflect matters perceived by the investigator in the course of his or her investigation, or (3) contain or include by attachment any statement or writing described in (a) to (e), inclusive, or summary thereof.

For the purpose of this section, "statements" include written statements by the person signed or otherwise authenticated by him or her, stenographic, mechanical, electrical or other recordings, or transcripts thereof, of oral statements by the person, and written reports or summaries of these oral statements.

Nothing in this section shall authorize the inspection or copying of any writing or thing which is privileged from disclosure by law or otherwise made confidential or protected as the attorney's work product.

Government Code Section 11507.7:

(a) Any party claiming the party's request for discovery pursuant to Section 11507.6 has not been complied with may serve and file with the administrative law judge a motion to compel

discovery, naming as respondent the party refusing or failing to comply with Section 11507.6. The motion shall state facts showing the respondent party failed or refused to comply with Section 11507.6, a description of the matters sought to be discovered, the reason or reasons why the matter is discoverable under that section, that a reasonable and good faith attempt to contact the respondent for an informal resolution of the issue has been made, and the ground or grounds of respondent's refusal so far as known to the moving party.

(b) The motion shall be served upon respondent party and filed within 15 days after the respondent party first evidenced failure or refusal to comply with Section 11507.6 or within 30 days after request was made and the party has failed to reply to the request, or within another time provided by stipulation, whichever period is longer.

(c) The hearing on the motion to compel discovery shall be held within 15 days after the motion is made, or a later time that the administrative law judge may on the judge's own motion for good cause determine. The respondent party shall have the right to serve and file a written answer or other response to the motion before or at the time of the hearing.

(d) Where the matter sought to be discovered is under the custody or control of the respondent party and the respondent party asserts that the matter is not a discoverable matter under the provisions of Section 11507.6, or is privileged against disclosure under those provisions, the administrative law judge may order lodged with it matters provided in subdivision (b) of Section 915 of the Evidence Code and examine the matters in accordance with its provisions.

(e) The administrative law judge shall decide the case on the matters examined in camera, the papers filed by the parties, and such oral argument and additional evidence as the administrative law judge may allow.

(f) Unless otherwise stipulated by the parties, the administrative law judge shall no later than 15 days after the hearing make its order denying or granting the motion. The order shall be in writing setting forth the matters the moving party is entitled to discover under Section 11507.6. A copy of the order shall forthwith be served by mail by the administrative law judge upon the parties. Where the order grants the motion in whole or in part, the order shall not become effective until 10 days after the date the order is served. Where the order denies relief to the moving party, the order shall be effective on the date it is served.



(a) It shall be unlawful for a person to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a disabled veteran business enterprise for the purpose of this article.

(2) Willfully and knowingly make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a disabled veteran business enterprise.

(3) Willfully and knowingly obstruct, impede, or attempt to obstruct or impede, any state official or employee who is investigating the qualifications of a business entity that has requested certification as a disabled veteran business enterprise.

(4) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys, contracts, or funds expended under a contract, that are awarded by any state agency, department, officer, or other state governmental agency, to which the person is not entitled under this article.

(5) Knowingly and with intent to defraud, fraudulently represent participation of a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract.

(6) Knowingly and with intent to defraud, fraudulently represent that a commercially useful function is being performed by a disabled veteran business enterprise in order to obtain or retain a bid preference or a state contract.

(7) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.

(8) Willfully and knowingly aid or assist in, or procure, counsel, or advise, the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document.

(9) Willfully and knowingly fail to file any declaration or notice with the awarding agency that is required by Section 999.2.

(10) Establish, or knowingly aid in the establishment of, or exercise control over, a firm found to have violated any of paragraphs (1) to (9), inclusive.

(b) Any person who violates any of the provisions of subdivision (a) shall be guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months or by a fine not exceeding one thousand dollars (\$1,000), or by both. In addition, the person shall be liable for a civil penalty of not less than ten thousand dollars (\$10,000) nor more than thirty thousand dollars (\$30,000) for the first violation, and a civil penalty of not less than thirty thousand dollars (\$30,000) nor more than fifty thousand dollars (\$50,000) for each additional or subsequent violation. A defendant who violates any of the provisions of subdivision (a) shall pay all costs and attorney's fees incurred by the plaintiff in a civil action brought pursuant to this section, including costs incurred by the awarding department or the Department of General Services.

(c) (1) The Department of General Services shall suspend any person who violates subdivision (a) from bidding on, or participating as either a contractor, subcontractor, or

supplier in, any state contract or project for a period of not less than three years and not more than 10 years, and if certified as a disabled veteran business enterprise, the department shall revoke the business's certification, and the small business or microbusiness enterprise certification if the business has both certifications, for a period of not less than five years. An additional or subsequent violation shall extend the periods of suspension and revocation for a period of not less than 10 years. The suspension and revocation of certification shall apply to the principals of the business and any subsequent business formed or financed by, or affiliated with, one or more of those principals.

(2) A person that violates any of the provisions of subdivision (a) shall pay all costs incurred by the awarding department and the Department of General Services for any investigations that led to the finding of the violation. Costs incurred shall include, but are not limited to, costs and attorney's fees paid by the department or the Department of General Services related to hearings and court appearances.

(3) The Department of General Services shall prohibit any business or person who fails to satisfy any of the penalties, costs, and attorney's fees imposed pursuant to subdivisions (b) and (c) from further contracting with the state until all of the penalties, costs, and attorney's fees are satisfied.

(d) In addition to the penalties imposed by this section, if a contractor is found to be in violation of paragraph (6) of subdivision (a), any existing contract between that contractor and any awarding department may be terminated at the discretion of the awarding department, and, where payment to the contractor is made directly by the state agency, the agency shall set off penalties and costs due to the state against any payments due to that contractor. In the event that the contracting state agency has forwarded the contract and invoices to the Controller for payment, the state agency shall reduce the amount due to the contractor as reflected in the claim schedule submitted to the Controller by the amount of the penalties and costs due the state. In addition, with regard to any penalties and costs due to the state that the state agency has not accounted for by either a set off against payments due to the contractor or a reduction reflected in the claim schedule submitted to the Controller, to the extent that the Controller is making payments to the contractor on behalf of any state agency, the Controller shall set off penalties and costs due against any invoices due to the contractor from any other contract awarded to the contractor.

(e) The awarding department shall report all alleged violations of this section to the Department of General Services. After any review and investigation it deems necessary, the Department of General Services shall subsequently report all allegations which have sufficient grounds to the Attorney General who shall determine whether to bring a civil action against any person or firm for a violation of this section. However, the Department of General Services may pursue administrative action and administrative penalties irrespective of whether the Attorney General chooses to bring a civil action.

(f) The Department of General Services shall monitor the status of all reported violations and shall maintain and make available to all state departments a central listing of all firms and persons who have been determined to have committed violations resulting in suspension.

(g) No awarding department shall enter into any contract with any person suspended for violating this section during the period of the person's suspension. No awarding department shall award a contract to any contractor utilizing the services of any person as a subcontractor suspended for violating this section during the period of the person's suspension.

(h) The awarding department shall check the central listing provided by the Department of General Services to verify that the person or contractor to whom the contract is being awarded,

or any person being utilized as a subcontractor or supplier by that person or contractor, is not under suspension for violating this section.