January 11, 2013

Ms. Diane F. Boyer-Vine
Legislative Counsel
State Capitol, Room 3021, B-30
Sacramento, CA 95814

Dear Ms. Boyer-Vine:

Pursuant to the requirements of Assembly Bill 21, Fourth Extraordinary Session (Chapter 19, Statutes of 2009), the Department of General Services is submitting this report on the elimination of the Good Faith Effort option for disabled veteran business enterprise participation in state contracts.

In keeping with our commitment to encourage conservation, we have posted this report to our website. The report can be viewed at http://www.dgs.ca.gov/ola/home/2013Reports.aspx. The report is entitled Elimination of the Good Faith Effort.

If you wish to receive a printed copy of this report, please contact Ms. Tanya Little at (916) 375-4936.

Sincerely,

Fred Klass
Director

cc: See attached Distribution List
Tanya Little, Assistant Chief, Office of Small Business and Disabled Veteran Business Enterprise Services, Procurement Division, Department of General Services

Enclosure

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LEGISLATURE—REVISED 12/28/12

DISABLED VETERAN BUSINESS ENTERPRISE PROGRAM: ELIMINATION OF THE GOOD FAITH EFFORT OPTION IN STATE CONTRACTING

As a result of Chapter 19, Statutes of 2009 (Assembly Bill 21, Fourth Extraordinary Session), the Good Faith Effort (GFE) option was eliminated effective July 28, 2009. Prime contractors had previously used the GFE option to justify the absence of Disabled Veteran Business Enterprise (DVBE) subcontractors when bidding on state contracts. This justification was required when a bidder was unable to meet the DVBE participation goal in a solicitation.

REPORTING REQUIREMENT

The statute required each state agency to report to the Department of General Services (DGS), on or before July 1, 2012, on the effect of this change. The DGS surveyed departments January through February 2012 in order to help them meet this requirement.

METHODOLOGY

State agency representatives were asked to fill out a questionnaire using a web-based survey tool. The questionnaire posed two questions:

- What was the impact of the elimination of the Good Faith Effort on your agency's outreach efforts to meet the three-percent DVBE participation goal between August 1, 2009, and December 31, 2011?

- What was the impact of the elimination of the Good Faith Effort on the actual award of contracts by your agency to bidders meeting the DVBE participation goal between August 1, 2009, and December 31, 2011?

For both questions, respondents were asked to indicate whether eliminating the GFE option made it more difficult, made it less difficult, or "did not have an impact." Respondents who indicated either "more difficult" or "less difficult" were asked to provide a written comment explaining the answer.

The design of the survey made it possible for more than one response from the same agency. In three cases of multiple responses, the second response was counted and the first response was excluded from the dataset.

RESULTS

The DGS received 124 responses representing 94 agencies, including units of the California State University system. In general:

- To the extent that eliminating the GFE option had an effect, respondents generally indicated the effect was positive. This trend was more pronounced in the question about outreach efforts, with 21.3 percent saying the change made these efforts less difficult and 8.2 percent indicating it made them more difficult. In the question about awarding contracts to bidders meeting the DVBE participation goal, 16.3 percent indicated the change made it less difficult and 9.8 percent said it made it more difficult.

- Majorities indicated that the elimination of the GFE option did not have an impact on their department's outreach efforts (70.5 percent) or on their agency's award of contracts to bidders meeting the DVBE participation goal (74.0 percent).

It is important to note that between fiscal years 2008-09 and 2010-11, the statewide DVBE participation rate increased from 2.96 percent to 4.82 percent. (These figures exclude the California State University system, which reports DVBE participation to the DGS voluntarily.)

COMMENTS FROM RESPONDENTS

The following pages present comments from respondents to the survey. The comments are presented exactly as submitted and have not been edited for spelling or grammar.

The first set of responses (pages 4 and 5) concerns agencies' DVBE outreach efforts; respondents who indicated the elimination of the GFE option made these either "more difficult" or "less difficult" were asked to provide a written comment explaining the answer.

The second set of responses (pages 6 and 7) concerns agencies' actual award of contracts to bidders meeting the DVBE participation goal. Again, respondents who indicated the elimination of the GFE option made this either "more difficult" or "less difficult" were asked to provide a written comment explaining the answer.

The survey tool did not force respondents who selected "more difficult" or "less difficult" to submit a comment, nor did it block comments from those who selected "did not have an impact." As a result, for each question, the number of comments differs slightly from the number of respondents who selected "more difficult" or "less difficult."

In their comments, respondents used a number of acronyms and abbreviations, some of which may be unfamiliar to the general reader. A glossary is below.

GLOSSARY OF ACRONYMS AND ABBREVIATIONS USED BY COMMENTERS

Abbreviation	Complete Phrase
CA	California
CAL FIRE	California Department of Forestry and Fire Protection
CalPERS	California Public Employees' Retirement System
Caltrans	California Department of Transportation
CDE	California Department of Education
CHP	California Highway Patrol
DHCS	Department of Health Care Services
DOR	Department of Rehabilitation
DVBE or DBVE	Disabled Veteran Business Enterprise
DWR	Department of Water Resources
GC	General Contractor
GFE	Good Faith Effort
IFB	Invitation for Bid
LPA	Leveraged Procurement Agreement
OBEO	Office of Business and Economic Opportunity
RFP	Request for Proposal
SB/DVBE	Small Business and Disabled Veteran Business Enterprise
SBE	Small Business Enterprise
SDSU	San Diego State University
SFSU	San Francisco State University

Survey Comments - Respondents Indicating It Made Outreach Efforts Less Difficult:
Respondent comments are exactly as submitted, including spelling and grammatical errors.

With the elimination of the Good Faith Effort it was easier to obtain the 3% DVBE participation, because we only award to those that meet DVBE requirements.
GFE created a sham and a good way for contractors to avoid participation. Statewide mandatory participation has helped tremendously to solidify the cause. If the State is serious about giving DVBE's work, mandatory participation is good.
It allowed more bidders to be considered responsive bidders and eliminated extra paperwork for the bidders to complete which inturn gave us a bigger response to bids
The change allowed us to require the contractor to meet the minimum goal. Most of contractors wanted to do the GFE instead.
The Good Faith Effort allowed bidder to bypass the DVBE requirements by focusing on completion of the Good Faith Effort as opposed to performing a diligent search for DVBEs that could support projects.
We had eliminated good faith effort option as an internal policy at least a year before.. DVBE was mandatory. No DVBE=unresponsive
made vendors search harder for DVBE companies;
The elimination of the GFE forced bidders to subcontract at least 3%, so it only helped our annual participation goal. The CDE's overall DVBE % increased 4.3% from FY 2008/09 to FY 2009/10.
Focused bidders efforts on committing to DVBE participation rather than submitting documents to support that they tried to find DVBEs and that they tried to subcontract with DVBEs to perform an element of the work of the contract.
Your decision to eliminate the Good Faith Effort was a good one.
It made it easier for us to reach the 3% goal annually or at least get closer to the 3% goal. Public Works, which has very high dollar volume, the vendors would always come in with good faith effort.
It made it less difficult to meet our 3% required goal.
Allowed us to evaluate our own solicitations and set our own goals for DVBE participation. Reduced the amount of time necessary for advertising solicitations.
More vendors wanted to participate since they didn't have to go through the GFE steps.
Less time was needed to complete bids.
Made it less difficult due to the fact that all bidders participating were DVBE or had a sub that was DVBE.
Through outreach events and bidders conferences, CalPERS has educated vendors on the importance of networking with the DVBE community in order to meet and/or exceed the 3% participation goal. With the elimination of the Good Faith Effort there has been stronger networking and relationships made between Prime and DVBE vendors for not only current but future business opportunities with the State.
Made it less difficult for bidders to compete (less paperwork). More bidders competed.
Did not limit to DVBE vendors.
When bidders no longer had the option of documenting GFE, they were forced to comply so our participation has been higher!
Success rate increased on getting DVBE's as subcontractors
Elimination of the Good Faith Effort made it easier for us to get the required minimum 3% DVBE participation from prospective bidders. We do not hear excuses anymore why Contractors can't meet the DVBE participation requirements. This also helps SFSU to further increase our DVBE goal attaintment.
The elimination of the GFE decreased the volume of phone calls concerning how to complete the DVBE program requirements. The elimination streamlined the process for prime bidders to obtain DVBE participation. The DOR encourages SB/DVBE to apply as we advertise on bidsync for a

minimum of three days. In addition, the department includes the DVBE incentive on all Service Order and Short form contracts.
CAL FIRE constantly strives to identify DVBEs as prime contractors or subcontractors for all contract opportunities. The shift of responsibility from potential contractors to department staff to identify possible DVBEs in contract opportunities has allowed staff to contact DVBEs directly to see if they can perform any aspects of the work to be completed. Since Cal Fire staff is more familiar with Commercially Useful Function and how to search for potential DVBE contractors, more outreach to DVBEs is being done, however, many of the goods and services required to meet the business needs of CAL FIRE are not available from DVBEs.

Comment from Respondent Indicating No Impact on Outreach Efforts:

Outreach efforts remained the same - Already strong outreach efforts have increased. Because Bidders must comply when DVBE program requirements are part of the bid, even greater efforts have been made to educate firms about the program and results of non-compliance. Despite that, numerous bidders have been rejected for failure to include DVBE participation.

Comments from Respondents Indicating It Made Outreach Efforts More Difficult:

Received many, many more phone calls from prospective bidders asking for referrals to DVBE sources
The Board is very committed to using SB/DVBE resources and makes an effort to use these types of resources for all LPA and goods purchases. However, when completing formal IFB/RFP procurements, many of the bidders do not qualify for the solicitation because they are unable to: 1) find a qualifying DVBE that can provide commercially useful function applicable to the soliciation; and/or 2) complete the complex DVBE forms accurately. The majority of our solicitations are informal and it is relatively simple to use SB/DVBE contractors. The Board rarely has a need to complete a formal soliciation, but when we do, the DVBE requirement is a stumbling block. Since the formal solicitations are typically high dollar amounts, it is in our best interest to require DVBE participation. Unfortunately, it does reduce the bidder pool and often results in higher costs to the state.
Bid participation fell off for reasons unknown.
The structure of this survey is seriously flawed as it tends to lead participants toward selecting "A" as a response in order to avoid having to come up with an explanation. Participants of this survey should have been able to respond anonymously for a more accurate result.
Health care services, legal services and many other specialized services including actuarial, rate setting, and training services cannot be obtained from DVBEs forcing DHCS to grant DVBE waivers or extend bid deadlines to enable bidders to achieve minimal participation (e.g., 01%). Bidding processes have been lengthened. DHCS has very little need for the limited service types available from DVBEs.
It made it difficult when goals were required because primes could not find qualified subs in the specialized works (i.e.,bio waste pick up).
The elimination initially made outreach more difficult because we had to re-educate ourselves and our suppliers, and re-engineer our efforts and processes.
Incorporating elimination language into public works project bid documentation wasn't clear to campus and suppliers. There are instances when our campus had to pay a higher price for goods or services for DVBE supplier.
Although, CHP did not meet the 3% DVBE goal, CHP's outreach efforts were not impacted. Goal was not met due to mandatory LPA with no SBE and/or DVBE participation.

Comments from Respondents Indicating It Made Actual Award of Contracts to Contractors Meeting DVBE Participation Goals Less Difficult:

The elimination of the GFE elimated the need to read and evaluate useless paperwork.
SDSU met the DVBE 3% participation goal for the first time, due to the elimination of the good faith effort. Verification of participation is less time consuming than verification of a good faith effort.
Contractors are required to comply.
Simplied the bidding process for both suppliers and the department alleviated the level of confusion/questions relating to the GFE.
1 staffer commented it was tough to decipher if enough good faith effort was made. The rules provided were vague that Contractor's could just get 3 quotes from a DBVE knowing they weren't going to use them.
It helped increase our DVBE participation as bidders were no longer able to use GFE and not meet the 3% requirement. Therefore, all responsive bidders had to have meet the 3% requirement and the award would count towards our goal.
Contractors who were serious about doing State work figured out how to participate quickly and made contracting easier. GFE was a ridiculous practice anyway, because there was no "good faith", there was just extra paperwork.
It allowed more bidders to be considered responsive bidders and eliminated extra paperwork for the bidders to complete which inturn gave us a bigger response to bids
We noticed a shift in prime contractors efforts to secure DVBE participation. In-turn our DVBE participation has improved.
made us more responsive as an agency to meeting DVBE participation
There were no bid protests over whether or not the winning bidder had performed a "Good Faith Effort" since all bidders committed to achieve the required minimum level of DVBE participation.
Our total dollars committed to using DVBE subs and suppliers increased.
More people were willing to participate in the bid process.
There were a few bids with no DVBE participation. So, researching a DVBE was done prior to bid going out.
Although CalPERS has not met our 3% goal we have seen improvement the past two years. Prior to the elimination of the Good Faith Effort, most of CalPERS large specialized contracts completed the GFE process for compliance. With the elimination of the GFE, CalPERS foresees our DVBE participation to increase as more of these multiyear contracts come up for renewal and, in turn, will have a mandatory 3% DVBE requirement
Same as above. And bidders tried harder to subcontract DVBE's knowing the Requirement & Incentive was still there to meet.
There was less documentation to check. They either met or didn't meet the participation requirements and not meeting the requirements disqualified their bid/proposal.
Estimated increase of $120,000 during that period
Most of our project awards have met the minimum 3% goal in DVBE participation.
Impact on Agency's Actual Award of Contracts: The elimination of the GFE streamlined the evaluation process in securing DVBE participation. Prior to 2009, the GFE process excluded contractors that didn't complete the paperwork correctly. Therefore, we were unable to evaluate their bids due to unmet bidding requirements.

Comment from Respondent Indicating No Impact on Actual Award of Contracts to Contractors Meeting the DVBE Participation Goal:

As for RFP's & IFB's there really wasnt much of an impact. We rarely received good faith effort in these areas. We usually received Good Faith Effort in public works so its good to see 3% from these contracts. It now balances us out and Public Works should no longer unbalance the DVBE goal.

Comments from Respondents Indicating It Made Actual Award of Contracts to Contractors Meeting the DVBE Participation Goal More Difficult:

Although some of the contracts due to the dollar were at times diddicult to award, Caltrans OBEO made goal structure changes for contracts to assist in awarding. The internal goal has been and will continue to be 5% DVBE Utilization. On our contracts we have a range of 5% on $1 million or less (Construction Contracts) 3% on $1-$5 Million and a $250,000 DVBE incentive. These changes have eased the ability to award without GFE.
The GFE elimination required the department to issue increased number of DVBE waivers if any doubt existed that DVBE compliance could be met. We lost the opportunity to achieve DVBE participation when there was potential but unknown DVBE opportunity. Some bidders did not understand GFE elimination and sought to satisfy requirements through GFE causing their bid to be rejected. DWR makes a recommendation to reinstate the GFE as a feature of the DVBE program.
It probably added at least 10% to the cost of the bids as GC's past on added mark up by the DVBE's. It also delayed award of contract pending further verification of commercially useful function.
Bidders must exercise exhaustive efforts to achieve minimal participation and use DVBEs without a choice. Previously, through the GFE process bidders could consider DVBEs and justify a business reason for not using them. For services types in which limited DVBEs exist, substitution of like DVBEs is virtually impossible.
Had to rebid with a goal waiver
Same as number two above, the elimination initially made actual awards more difficult because of the learning curve.
Protest in contract award due to clarity of DVBE elimination language. The DVBE elimination effort is good for small businesses in CA. I'd recommend training for all participants on DVBE language.
In the beginning, about 45% of bids had to be rebid with DVBE participation waived - Justification: not enough incidentals to warrant DVBE participation. CHP had to increase their internal exemption waiver list to include several personal services that have limited incidentals to subcontact out.
With the elimination of the Good Faith Effort it has sometimes been more difficult awarding, with less vendors/contractors participating and having to throw out low bidders for not meeting DVBE requirements.
More difficult for which we compensated with increased assistance.
I had to include in bids, but often they were unable to provide services - Made the process lengthy.

LIST OF RESPONDING DEPARTMENTS

Below is a list of departments that responded to the survey. Where two or more people in the same department submitted responses, the total number of respondents is indicated in parentheses after the department name.

Business, Transportation and Housing Agency
Alcoholic Beverage Control Appeals Board
Business, Transportation and Housing Agency
Department of Corporations
California Highway Patrol
Department of Financial Institutions
Department of Motor Vehicles
Department of Transportation (Caltrans) (4)

Environmental Protection Agency
Office of Environmental Health Hazard Assessment
Department of Pesticide Regulation
State Water Resources Control Board

Food and Agriculture
Department of Food and Agriculture
2nd District Agricultural Association
9th District Agricultural Association
17th District Agricultural Association
23rd District Agricultural Association
26th District Agricultural Association
30th District Agricultural Association
32nd District Agricultural Association
35A District Agricultural Association
37th District Agricultural Association
46th District Agricultural Association
48th District Agricultural Association
49th District Agricultural Association

Health and Human Services Agency
Department of Aging
Department of Alcohol and Drug Programs (2)
Department of Developmental Services
Emergency Medical Services Authority
Department of Health Care Services
Department of Mental Health[1] (3)
Office of Statewide Health Planning and Development
Department of Social Services (2)
Department of Public Health
Department of Rehabilitation

[1] Now the Department of State Hospitals. The survey was conducted prior to the name change.

Labor and Workforce Development Agency
Agricultural Labor Relations Board
Employment Development Department
Department of Industrial Relations

Natural Resources Agency
Department of Boating and Waterways
Coastal Conservancy
Department of Conservation
California Conservation Corps
California Energy Commission
Department of Fish and Game
Department of Forestry and Fire Protection (CAL FIRE)
Department of Parks and Recreation (2)
Natural Resources Agency
Department of Resources Recycling and Recovery (CalRecycle)
Sierra Nevada Conservancy (2)
Department of Water Resources

State and Consumer Services Agency
Building Standards Commission
Department of General Services (2)
California Science Center
State and Consumer Services Agency
California Public Employees' Retirement System
Victim Compensation and Government Claims Board

Other Executive Departments
Office of Administrative Law
Department of Corrections and Rehabilitation[2] (7)
California Emergency Management Agency (2)
Delta Stewardship Council
Fair Political Practices Commission
Department of Finance
California Horse Racing Board
State Lands Commission (2)
Department of Personnel Administration[3]
Commission on Peace Officer Standards and Training
California Senior Legislature
Commission on State Mandates
Governor's Office of Planning and Research
San Francisco Bay Conservation and Development Commission
California Student Aid Commission
Commission on Teacher Credentialing
California Technology Agency
Department of Veterans Affairs (3)

[2] Includes California Correctional Health Care Services.
[3] The survey was conducted prior to the merger that formed the Department of Human Resources.

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San José State University
Sonoma State University
California State Polytechnic University, Pomona
California State University, Sacramento
California State University, San Bernardino
California State University, Stanislaus