

STATEWIDE SB/DVBE ADVOCATE TOOLKIT

Disabled Veteran Business Enterprise Program

CHAPTER VI



February 2012

CHAPTER VI DVBE PARTICIPATION PROGRAM

CALIFORNIA DISABLED VETERAN BUSINESS ENTERPRISE PROGRAM

The State of California spends billions of dollars annually for commodities and services to maintain state programs and provide public services. With over 230 agencies and departments in existence there are a myriad of needs that provide a great opportunity to include the DVBE business community in our competitive solicitations.

Through legislative enactment and executive orders, the DVBE program is brought to the forefront of California's competitive bidding requirements. With the exception of a few categories, DVBE participation is mandatory in all contracts and bidders must comply with solicitation requirements where DVBE compliance is mandatory or risk bid rejection for DVBE program non-compliance.

The DVBE program is a multi-layered program that includes numerous program requirements, procedures and activities, including the DVBE Incentive, Commercially Useful Function, DVBE substitution and consideration for formal program exemption or waiver from a specific contract award, whether open formal competition or through the Non-Competitive Bid process. As an Advocate it will be important to understand how your department handles the DVBE program – how it exempts or waives a particular contract or category of contracts; whether it has a policy in place for using the DVBE Option; whether your buyers and contract analysts understand and appropriately evaluate Commercially Useful Function; whether your department has a higher purchasing delegation authority; whether your department has DVBE bid template language and forms, and so forth.

There are numerous approaches to helping your department achieve DVBE participation in your contracts, including: competitive solicitations for services or commodities and IT Goods and Services, use of leveraged procurement agreement (LPA) contracts, informal solicitations, CAL Card and use of the DVBE option bid process. Purchasing activities and contracting for services, though fundamentally the same, have slightly different approaches and achieving DVBE participation will depend on the specific needs and requirements of a department, and the availability of qualified DVBE firms to meet those needs. Understanding these fundamentals will be key to a creating a successful DVBE program within your department.

DVBE Program codes and regulations may be found under:

- Military and Veterans Code 999 et al
- Public Contract Code 10115
- California Code of Regulations: Title 2, Administrations; Division 2, Financial Operations; Chapter 3 Department of General Services, Sub chapter 10.5 DVBE Participation Goal Program for State Contracts

The following is an overview of the fundamental elements of the California DVBE program you should be aware and includes explanations and code citations, followed by sample DVBE incentive calculations.

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PROGRAM ESTABLISHED

The State of California established the Disabled Veteran Business Enterprise (DVBE) Program in 1989 under Military and Veterans Code 999 et al, California Code of Regulations, 1896.60 and Public Contract Code 10115 to help California's disabled veterans compete more effectively for a portion of the billions of dollars awarded competitively through the state's bidding process, and to promote self-reliance for California's disabled veterans by offering veterans the opportunity to gain experience in business, while sharing their expertise with the citizens of California, and provide a goal of awarding 3% of all state contracts to certified DVBEs

Under Public Contract Code (PCC) 10115 and Military and Veterans Code (MVC) 999 et al. California state departments and agencies are required to offer procurement and contracting opportunities to California certified disabled veterans through competition or use of the DVBE Option informal bid process.

ADVOCACY

Under MVC 999.12, state agencies and departments are to appoint a DVBE advocate. This person shall also serve as the Small Business advocate. Advocate duties include:

- Identify potential DVBE subcontractors and potential subcontracting opportunities for DWR prime contractors
- Identify DVBE focused bid opportunities
- Match DVBE business services with the appropriate DWR program
- Make information regarding pending solicitations available to the DVBE business community
- Represent DWR at local and statewide outreach functions
- Assist prime bidders search out potential DVBE firms

ANNUAL PARTICIPATION GOALS

Under MVC 999 and PCC 10115 each agency and department shall achieve annual DVBE participation goals of 3 percent.

A department's DVBE goal is achieved through the award of competitive bid for goods, personal services, Information Technology goods and services and construction services.

Awards are also made through the DVBE Option bid. This is an informal solicitation with a dollar values greater than \$5,000 and but less than \$249,999.99.

REPORTING REQUIREMENTS

The annual report identifies a department's total expenditures for personal services, goods, IT goods/services, and construction services. Total DVBE dollars expended are calculated against the

Each state agency and department must report to the Department of General Services, Office of Small Business and DVBE Services (OSDS) a department's level of annual DVBE participation achieved.

Reports are due each August 1st to DGS OSDS. If a

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department's total annual expenditure to obtain the level of DVBE participation achieved in a fiscal year.

department fails to achieve 3 percent DVBE participation, it must include a DVBE Corrective Action and Improvement Plan.

DVBE PROGRAM WAIVERS/EXEMPTIONS

Under MVC 999 DVBE program requirements apply to all state contracts for personal services, Information Technology Services and Commodities, Construction Services and Commodities.

DVBE compliance requirements do not apply to:

- *Interagency Agreements*
- *Grants*
- *Federal Agreements*
- *CSU or UC contracts*
- *PIA agreements*
- *Joint Power Agreements*
- *County, city, school or local agency contracts*
- *Contracts less than \$5,000*
- *Contract amendments previously DVBE program exempt*

Each department has the authority to exempt/waive the DVBE program from a particular solicitation or contract. Exemption is obtained during bid development and prior to CSCR advertisement.

Each department may have a specific internal process. How your department approves a program waiver is specific to your department and your internal policy and procedures govern the process.

If your department has neither policies nor procedures, they should be developed, implemented and disseminated throughout your department's procurement and contracting staff and management.

DETERMINE DVBE OPPORTUNITY

DVBE Program requirements apply to competitively bid contracts and some Non-Competitive Bid contracts. DVBE participation in a solicitation must be determined *prior* to advertisement of the solicitation.

First decide whether there is DVBE opportunity.

The services and commodities purchased will be unique to your department. There may be very specialized services or products which lack DVBE opportunity. These are circumstances relevant to a decision to include DVBE or request an exemption. Ask the following questions when deciding whether or not DVBE should be included.

The questions posed can help determine whether or not to include the program in your solicitation.

Identify desired/needed contractor services:

Determine opportunity on the basis of:

- *Available services/commodities*
- *Commercially Useful Function related to DVBE services or commodities*
- *Available DVBE firms within the service region*

1. Does the service needed reflect a DVBE opportunity?
 - a. Are services for landscaping, grounds maintenance, janitorial, survey, print/publication services, consulting, proprietary services?
2. If yes, can potential subcontractor services or commodities then be identified?
 - a. Is there opportunity for: Office supplies, herbicides, hand tools, fuel, photo supplies, tires, copying, printing, meeting facilitation, etc?
3. If there are, then identify the potential DVBE services and commodities to be provided, and then

IMPORTANT: Determining whether or not DVBE firms available can provide CUF is important and can impact a decision to include

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or exempt DVBE requirements.

If services are to be provided by a consulting firm, there may be tasks that can be performed by a DVBE firm. Review the SOW closely to help identify potential DVBE opportunities.

*When services are based **solely** on the consultant's education and experience, it is likely that there will be no DVBE opportunity because the individual has the requisite experience and education leaving nothing to be subcontracted.*

Lack of DVBE firms in a service region may be justifiable reason to exempt the program from a solicitation effort.

True emergency responses do not require DVBE exemptions due to the nature of the situation being addressed i.e. natural disaster response, protection state/private property and preservation of life.

Be clear on the Std. 215, Agreement Summary. Identify the emergency nature of the contract when addressing Page 2, Question 23 – Are DVBE Goals Required?

ask.

- a. Are the services/commodities identified of a "commercially useful nature" to the department's overall contracting need?
- b. Are the services/commodities needed directly relate to the overall scope of services to be provided?
4. Are services of a consulting nature, to be provided by a consulting firm? If so, are there relevant tasks for potential DVBE subcontracting? Consider the following:
 - a. Are there public outreach/marketing tasks?
 - b. Are there printing/publication tasks?
 - c. Are there engineering support tasks?
 - d. Are there environmental support tasks?
i.e. permitting, surveying, lab testing
 - e. Are supporting account services needed?
5. Are the consulting services provided a "product of the mind" and based solely on:
 - a. The contractor's experience?
 - b. The contractor's education?
6. Are DVBE contractors located in the service region?
 - a. Is the service restricted to a specific geographic region?
 - b. Are there DVBE firms within that region?
 - c. Is the subcontractor required to be located within the region?
 - d. Are there DVBE firms available within the region?
7. Is this an emergency related service to protect lives or property?

DVBE PROGRAM BID LANGUAGE AND FORMS

To protect your department from bid protests related to the DVBE program, your bid templates must state very clearly the DVBE program requirements.

Failure of a bidder meet DVBE program requirements as specified in a solicitation will not have their bid evaluated and is grounds for bid rejection.

Do your bid templates include DVBE language?

- A bid must clearly state when it is waived from DVBE program requirements.
- A bid must clearly state that DVBE program goals are mandated and must be complied with when included in a solicitation **and** that bidders will be rejected for non-compliance.
- A bid must clearly state the level of DVBE participation. If different than the mandated 3 percent, this must also be clearly stated.
- Is your department required to include the DVBE Incentive Program, or is it an option? It is unless your department has achieved DVBE goals in two of

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the three prior years and is listed on the DGS OSDS exemption list.

- The bid should also be inclusive of following language:
 - Detailed DVBE program instructions and reference to required forms
 - Commercially Useful Function (CUF) requirements
 - DVBE Subcontractor Payment language should be included
 - DVBE substitution language
 - DVBE program related to contract amendments
 - Contract Audits

DVBE INCENTIVE

The DVBE Incentive is an opportunity for non-DVBE and DVBE firms to receive an incentive calculation in state bids that may place them in line for award of the solicitation.

Apply the incentive to each bidder proposing DVBE participation in their solicitations. The incentive amount applied is the same level as the bidder's DVBE commitment level.

For low price award, a bidder's incentive is factored by calculating their incentive amount against the bid price of the lowest bidder. That amount is then subtracted from their bid price to see if they are the low bidder.

A low bidder proposing DVBE participation will have their bid price adjusted by calculating their proposed incentive amount against their own bid price. That amount is then subtracted from their bid price to determine bid ranking position.

The incentive cannot be used to displace an award to a certified small business with that of a non-small business.

For awards based on high score, the incentives shall not exceed 5 percent nor be less than 1 percent of total possible available points awarded.

Does not include points for socio-economic incentives and preferences.

Any awarding department that applies the DVBE program requirement in its solicitations must also offer the DVBE incentive to bidders. For bidders including DVBE participation an incentive calculation may be applied and when applied, may result in the award of the contract.

The incentive calculation is 1 – 5 percent on solicitations that do not require DVBE participation.

In solicitations that require DVBE participation the incentive shall be 3 – 5 percent.

Incentives applied shall not be less than one (1) percent, or higher than 5 percent. Incentive amounts must be whole numbers, i.e. 1, 2 or 3 percent etc.

The incentive is applied during the evaluation process and is only applied for responsive bids from responsible bidders proposing the percentages of DVBE participation for the incentive specified in the solicitation.

Solicitations may also provide an incentive scale under which bidders committing to higher levels of participation qualify for greater incentives.

Departments that have met DVBE program goals, two of the three prior years may elect to exempt contracts from the DVBE incentive. Exemption from the DVBE incentive is granted by the department's highest ranking executive, or their designee.

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SAMPLE INCENTIVE CALCULATIONS AT THE END OF THIS CHAPTER

DVBE PROGRAM AND CONTRACT MANAGEMENT

One way to establish DVBE program management and oversight is to include relevant clauses in your contract language related to DVBE:

- *Reporting*
- *Substitution*
- *Non-performance*
- *Payment*
- *Contract Audits*

When establishing or updating your department's DVBE program be sure to include a contract management element to ensure your department maintains control of program requirements.

There should be defined roles as to who is responsible for what.

One of the more critical aspects of the DVBE program is program oversight related to an executed contract whether for construction, IT services, and consulting or personal services that included DVBE program requirements as a condition of award. In such cases, there will be DVBE subcontractors involved.

Two things must be clearly defined:

- Contractually, what are the responsibilities of the prime contractor to the department as related to the DVBE program?
 - DVBE activity reports
 - Substitution requests
 - DVBE payment
 - DVBE non-performance
 - Contract Audits
- Who represents the department regarding DVBE related contract issues?
 - Is the contract manager the first point of contact?
 - Does the CM keep the advocate advised?
 - When does the advocate get involved?
 - Is the advocate a first point of contact for the prime firm?
 - Who does the DVBE firm contact if having difficulty getting prime to honor the DVBE commitment?

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COMMERCIALLY USEFUL FUNCTION (CUF)

DVBE CUF Solicitation documents include:

- Bidder Declarations GSPD 05-105 or,
- Bidder Declaration GSPD 06-106
- Std. 843 DVBE Bidder Declaration
- Other department program documents that establish a CUF relationship

To establish CUF, review the above bid forms and compare their services/products to:

- Their OSDS certification for approved NAICS/UNSPNC Codes
- The contract scope of work to determine if what they provide is within the scope and within their services/products offered
- Their website to determine the services or products are normal for their business practice and that they aren't further subcontracting
- Make direct contact with the DVBE firm to establish services/products are CUF

Whenever a certified DVBE responds to a department or agency's solicitation as a prime firm or as member of a prime team subcontractor the awarding department must establish the firm meets a commercially useful function. In a bid response situation, a

- DVBE prime firm that fails the CUF evaluation cannot be considered and must have their bid rejected
- Prime firm that selects a DVBE subcontractor and that DVBE subsequently fails the CUF evaluation must have their bid rejected.

Firms selected must perform a "commercially useful function" relevant to this contract. The term "DVBE contractor, subcontractor or supplier" means any person or entity that satisfies the ownership (or management) and control requirements of CCR 1896.61 (f); is certified in accordance with CCR 1896.70 and provides services or goods that contribute to the fulfillment of the contract requirements by performing a commercially useful function. As defined in CCR 1896.61(l), a person or an entity is deemed to perform a "commercially useful function" if a person or entity does *all* of the following:

- Is responsible for the execution of a distinct element of the work of the contract
- Carries out the obligation by actually performing, managing, or supervising the work involved
- Performs work that is normal for its business services and functions
- Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices

A contractor, subcontractor, or supplier will not be considered to perform a commercially useful function if the contractor's, subcontractor's or supplier's role is limited to that of an extra participant in order to obtain the appearance of disabled veteran business participation.

Certification of DVBE Subcontractor Payments

SB 548, Chapter 595, Statutes of 2009 became effective January 1, 2010. The intent is to ensure that contractors do not list DVBE subcontractors for purposes of meeting requirements or receiving an incentive during the bidding phase and then not using the

Military and Veterans Code 999.5 mandates that an awarding department shall require the prime contractor that entered into a subcontract with a disabled veteran business enterprise to certify to the awarding department all of the following:

1. The total amount the prime contractor received under the contract
2. The name and address of the DVBE firm (or firms) that participated in the performance of the contract

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DVBE(s) during the contract or project.

It is each department's responsibility to ensure a prime firm meets its DVBE commitment and report violations should the prime firm not meet their obligation as identified in the bid response.

This is done by including appropriate language within the solicitation and contract, and establishing a mechanism to receive, monitor and validate certification information.

Because this information is received after the contract has expired, potentially leaving an after-the-fact problem to be resolved, a department might consider implementing annual or semi-annual participation reports to mitigate potential problems of DVBE usage and payments during the term of the contract.

3. The amount each DVBE received from the prime contractor
4. That all payments under the contract have been made to the DVBE enterprise

The following language, or similar, is required in to be included in solicitations issued after January 1, 2010.

"For this agreement contractor made a commitment to achieve disabled veteran business enterprise participation, then contractor must within 60 days of receiving final payment under this agreement (or within such other time period as may be specified elsewhere in this agreement) certify in a report to the awarding department: The total amount the prime contractor received under the contract; the name and address of the DVBE firm (or firms) that participated in the performance of the contract; the amount each DVBE received from the prime contractor; that all payments under the contract have been made to the DVBE enterprise; the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Military and Veterans Code (M&VC) 999.5(d))"

If it is established that violations occurred and the prime firm falsified payment information, the prime firm is subject to civil penalty for each violation in the minimum amount of \$2,500.

DVBE Subcontractor Substitution

PAC Broadcast January 19, 2010 addresses Replacement of Disabled Veteran Business Enterprise Subcontractors.

Requests to replace a DVBE subcontractor must be amply documented to show that the replacement meets the requirements of California Code of Regulations, Military and Veteran Code, and Public Contract Code. Requests are to be sent electronically to:

osdshelp@dgs.ca.gov

Understanding the substitution process is critical so that you may educate contractors and department staff to ensure any substitution that takes place is done so according to regulations.

There are very specific steps to be followed when a prime firm requests substitution of a DVBE subcontractor. Prime firms must be made aware of substitution requirements to mitigate potential problems with spontaneous substitution of a DVBE firm listed on the contract with that of one not listed.

The following, or similar, language is to be incorporated into solicitations and resulting contracts:

"Contractor understands and agrees that should award of this contract be based in part on their commitment to use a Disabled Veteran Business Enterprise (DVBE) subcontractor(s) identified in their bid or offer, per Military and Veterans Code 999.5(e), may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services (DGS). Changes to the scope of work that impact the DVBE subcontractor(s) identified in the bid or offer and approved DVBE substitutions will be documented by contract amendment.

Failure of Contractor to seek substitution and adhere to the

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DVBE participation level identified in the bid or offer may be cause for contract termination, recovery of damages under rights and remedies due the State, and penalties as outlined in M&VC 999.9; Public Contract Code (PCC) 10115.10 or PCC 4110 (applies to public works only)”

DVBE Substitution Form and Instructions web link:

<http://www.documents.dgs.ca.gov/pd/dvbe/DVBE%20Substitution%20Form%20and%20Instructions.xls>

PAC Broadcast January 19, 2010 SB 548 – Replacement of Disabled Veteran Enterprise Subcontractors follows

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**Department of General Services
Procurement Division**

707 Third Street, Second Floor, West Sacramento, CA 95605
(916) 375-4400 (800) 559-5529

Broadcast Date: January 19, 2010

TO: Department Directors

Procurement and Contracting Officers (PCOs)

Purchasing Authority Contacts (PACs)

**Small Business and Disabled Veteran Business Enterprise
Advocates**

State Contracting Advisory Network (SCAN)

**RE: SB 548 – Replacement of Disabled Veteran Business Enterprise
Subcontractors**

This bulletin provides information regarding SB 548, Chapter 595, Statute of 2009, which became effective on January 1, 2010. This bill pertains to the State's Disabled Veteran Business Enterprise (DVBE) Program and is intended to ensure that contractors do not list DVBE subcontractors for purposes of meeting requirements or receiving an incentive during the bidding phase and then not using the DVBE(s) on the project. This bill modified Military & Veterans Code § 999.5 to include the following:

(d) Upon completion of an awarded contract for which a commitment to achieve a disabled veteran business enterprise goal was made, an awarding department shall require the prime contractor that entered into a subcontract with a disabled veteran business enterprise to certify to the awarding department all of the following:

- (1) The total amount the prime contractor received under the contract.
- (2) The name and address of the disabled veteran business enterprise that participated in the performance of the contract.
- (3) The amount each disabled veteran business enterprise received from the prime contractor.
- (4) That all payments under the contract have been made to the disabled veteran business enterprise. An awarding department shall keep that certification on file. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of two thousand five hundred dollars (\$2,500) and the

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maximum amount of twenty-five thousand dollars (\$25,000). An action for a civil penalty under this subdivision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment, and

(e) A prime contractor may, subject to the approval of the Department of General Services, replace a disabled veteran business enterprise identified by the prime contractor in its bid or offer, pursuant to subdivision (a) of Section 999.10, with another disabled veteran business enterprise.

The Department of General Services (DGS) is looking at the feasibility of modifying the General Conditions and the General Provisions to include the reporting requirement into contracts. Until such time that these terms are modified the following, or similar, language is to be included into solicitations issued on or after January 1, 2010, and resulting contract documents.

If for this agreement contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then contractor must within 60 days of receiving final payment under this agreement (or within such other time period as may be specified elsewhere in this agreement) certify in a report to the awarding department: (1) the total amount the prime contractor received under the contract; (2) the name and address of the DVBE(s) that participated in the performance of the contract; (3) the amount each DVBE received from the prime contractor; (4) that all payments under the contract have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Military & Veterans Code (M&VC) § 999.5(d))

After award of a contract, the successful bidder/contractor must use the DVBE subcontractor(s) and/or supplier(s) proposed in their bid or offer to the State unless a substitution is requested and is approved by the awarding department and the DGS. The California Code of Regulations (CCR), Title II section 1896.64(c) and Public Contract Code § 4107 (for Public Works) provide the current requirements for awarding departments to approve the substitution of a DVBE subcontractor. Departments shall follow the processes set forth in 2 CCR § 1894.64(c) and PCC § 4107 when a prime contractor requests the substitution of a DVBE subcontractor with the added provisions that: 1) only another DVBE subcontractor shall be considered to replace a DVBE subcontractor, and 2) the awarding department shall obtain final approval to replace a DVBE subcontractor from the DGS.

As an added step to ensure that prime contractors honor their commitments to use DVBE subcontractors and meet the commitment levels identified in bids, departments are to include language in solicitations and contracts that highlight legal requirements. Effective for solicitations issued on or after January 1, 2010,

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the following suggested or similar language is to be incorporated into solicitations and resulting contracts:

Contractor understands and agrees that should award of this contract be based in part on their commitment to use the Disabled Veteran Business Enterprise (DVBE) subcontractor(s) identified in their bid or offer, per Military and Veterans Code 999.5 (e), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services (DGS). Changes to the scope of work that impact the DVBE subcontractor(s) identified in the bid or offer and approved DVBE substitutions will be documented by contract amendment.

Failure of Contractor to seek substitution and adhere to the DVBE participation level identified in the bid or offer may be cause for contract termination, recovery of damages under rights and remedies due to the State, and penalties as outlined in M&VC § 999.9; Public Contract Code (PCC) § 10115.10, or PCC § 4110 (applies to public works only).

Requests to replace a DVBE subcontractor must be amply documented to show that the replacement meets the criteria as specified in the CCR or the PCC. Documentation may include, but is not limited to the request, confirmation of receipt of the request, the subcontractor's objection and request for hearing and the final Statement of Decision. Requests and resulting amendments generated by the DVBE subcontractor substitution should be timely so as not to unreasonably delay the contractor's performance of the contract, resulting in potential claims against the awarding department for delay damages.

Requests are to be sent electronically to osdshelp@dgs.ca.gov. Click on the following link to access the "DVBE Substitution" Form and Instructions: [DVBE Substitution Form and Instructions](#).

For general assistance, email osdshelp@dgs.ca.gov or call (916) 375-4940.

For questions regarding purchasing authority requirements, please contact DGS/PD's Purchasing Authority Management Section at: pams@dgs.ca.gov.

For questions about the State Contracting Manual, Vol. 1, please contact the DGS Office of Legal Services attorney assigned to your department.

For questions about the State Contracting Manual, Vol. 2 and Vol. 3, please contact the DGS/PD's Policy and Procedures Office at: ppo@dgs.ca.gov.

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DVBE PROGRAM SUBSTITUTIONS AND ABUSE

The following actions are designed to minimize the potential for DVBE program abuse, the subsequent request for an investigation of potential abuse and enforcement of penalties if applicable. Also included are the actions that may be taken if a DVBE or prime contractor reports potential DVBE abuse.

At time of contract award, notify the prime contractor with a cc to the DVBE subcontractor that a copy of the written agreement with the DVBE subcontractor is required to be sent to the awarding department within a certain timeframe (30 calendar days). Follow up with the prime contractor if the written agreement is not received. The notice to the prime contractor should do all of the following:

- A. Explain that the DVBE participation stated on the Std. 840 is a commitment to use the DVBE pursuant to the California Code of Regulations, title 2, section 1896.62(c) (attach the DVBE regulations).
- B. Confirm the specific element(s) of work that the Prime contractor committed to the awarding department would be performed by a DVBE. Also, confirm the dollar amount or contract percentage of the commitment.

Explain that substitution of a DVBE must be requested prior to completing the element(s) of the work that were committed to be performed by the DVBE, the substitution request must be completed in accordance with California Code of Regulations, title 2, section 1896.64(c), and the DVBE substitution request must be approved by the awarding department in accordance with California Code of Regulations, title 2, section 1896.64(d).

Note - It really helps when you have confirmed up front with the prime and the DVBE exactly what the State requires. Then, they cannot claim later that they did not know these things. If you send the above notice and receive the written agreement between the prime contractor and the DVBE, you are in a much better position to investigate any future allegation of DVBE program abuse or facilitate the resolution of any conflicts between the prime and the DVBE.

Steps to complete when a DVBE reports that the prime contractor failed to use and pay the listed DVBE:

- A. Contact the contract manager to determine if the element(s) of the work to be performed by the DVBE have already been completed and if the prime contractor has invoiced and been paid for the work.
- B. Confirm if there have been any amendments or changes to the scope of the work of the contract.
- C. Advise the contract manager that you are sending a letter (see b. below), and if applicable, request that the contract manager not approve any invoices for the work to be performed by the DVBE until the prime contractor responds to your letter.

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- D. Send a letter certified mail/return receipt to the prime contractor with a cc to the DVBE subcontractor to:
- I. Confirm the specific element(s) of work that the Prime contractor committed to the awarding department would be performed by a DVBE. Also, confirm the dollar amount or contract percentage of the commitment. If possible, attach a copy of the Std. 840 submitted by the prime.
 - II. Ask that they document their use of the DVBE either by providing copies of paid invoices to the DVBE, a written contract/agreement with the DVBE to perform the work identified on the Std. 840, or other documentation that the prime and the DVBE have reached an agreement as to exactly what work will be performed and the schedule to perform that work.
 - III. Remind the prime that the DVBE participation stated on the Std. 840 is a commitment to use the DVBE pursuant to the California Code of Regulations, title 2, section 1896.62(c). Reference and attach a copy of the original notice to the prime at time of contract award.
 - IV. Remind the prime that substitution of a DVBE must be requested prior to completing the element(s) of the work that were committed to be performed by the DVBE, the substitution request must be completed in accordance with California Code of Regulations, title 2, section 1896.64(c), and the DVBE substitution request must be approved by the awarding department in accordance with California Code of Regulations, title 2, section 1896.64(d).
 - V. Attach a copy of the DVBE Regulations

C. Require a written response within 30 calendar days or less

It is hopeful that your letter to the prime contractor will result in the desired outcome, which is achievement of the participation by the DVBE. If after 30 calendar days, there is no response or prime indicates that they do not intend to honor their DVBE commitment, then you should contact your legal office to explore if there are any actions that may be taken under the contract.

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SAMPLE DVBE INCENTIVE CALCULATION BASED ON LOW PRICE

The following assumes bidders must comply with DVBE program requirements

FIRM NAME	(A)	(B)	(C)	(D)	(E)
Responsive/Responsible	Yes	Yes	Yes	Yes	No
Original Net Bid Price	\$15,000	\$15, 500	\$16, 275	\$17,100	\$17,250
Initial Rank					Non-Responsive
Is Bidder a Small Business? (Yes or No)	No	Yes	Yes	Yes	No
Small Business Certification #	N/A	54909	27111	14235	N/A
Applied SB Preference	\$0.00	\$ 750.00	\$750.00	\$ 750.00	N/A
Adjusted Bid Amount	\$ 15,000	\$ 14,750	\$ 15,525	\$ 16,350	N/A
DVBE INCENTIVE (Yes/No/NA)	Yes	Yes	Yes	Yes	NA
Confirmed DVBE Participation	3%	4%	3%	5%	0%
Incentive Amount	\$ 450.00	\$ 600.00	\$ 450.00	\$ 750.00	N/A
Final Adjusted Bid Amount	\$ 14,500	\$ 14,150	\$ 15,075	\$ 15,600	N/A
FINAL RANK	2	1	3	4	N/A

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SAMPLE DVBE INCENTIVE CALCULATION BASED ON LOW PRICE

The following assumes the DVBE program is optional and not required.

FIRM NAME	(A)	(B)	(C)	(D)	(E)
Responsive/Responsible	Yes	Yes	Yes	Yes	Yes
Original Net Bid Price	\$88,000	\$88,250	\$88,300	\$92,900	\$93,750
Initial Rank	1	2	3	4	5
Is Bidder a Small Business? (Yes or No)	No	Yes	No	Yes	No
Small Business Certification #	NA	54909	N/A	14235	N/A
Applied SB Preference	\$0.00	\$ 4,400	\$0.00	\$ 4,400	N/A
Adjusted Bid Amount	\$ 88,000	\$ 83,850	\$ 88,300	\$ 88,500	N/A
DVBE INCENTIVE (Yes/No/NA)	Yes	Yes	NA	Yes	Yes
Confirmed DVBE Participation	2%	1%	0%	5% Bidder is certified DVBE	3%
Incentive Amount	\$ 1,760	\$ 880	\$ 0.00	\$ 4,400	\$2,640
Final Adjusted Bid Amount	\$ 86,420	\$ 82,970	\$ 88,300	\$ 84,100	\$91,110
FINAL RANK	3	1	4	2	5

**CHAPTER VI
DVBE PARTICIPATION PROGRAM**

SAMPLE DVBE INCENTIVE CALCULATION BASED ON HIGH POINTS

The following assumes DVBE program compliance was optional for responding firms

Proposing Firm	A	B	C
Responsive/Responsible	Yes	Yes	Yes
Total Points	1050	1155	1125
Eligible Preference	SB	None	SB
SB Preference points achieved	57.75	0	57.75
Points Subtotal	1107.75	1155	1182.75
Initial Rank	3	2	1
DVBE Participation	No (0%)	Yes (5%)	Yes (2%)
Incentive Points Applied	None	60	24
Adjusted Points	1107.75	1215	1206.75
Final Rank	3	1	2