

Program Abuse

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SB/DVBE PROGRAM ABUSE

What is Program Abuse?

What are the Sanctions and Penalties?

Awarding Departments' Responsibility

OSDS Responsibility

DVBE Substitutions

Questions?

What is Program Abuse?

- (1) Fraudulently obtain or attempt to obtain public monies or contract awarded by the state to which a person is not entitled.**
- (2) Fraudulently represent SB/DVBE participation in order to obtain or retain a bid preference or a state contract.**
- (3) Fraudulently represent a CUF in order to obtain or retain a bid preference or a state contract.**

SANCTIONS & PENALTIES

**Revocation of the certification(s)
for 5 years (first violation)
or 10 years (additional violation)**

**Suspension from doing business
with the state 3-10 years**

**Misdemeanor punishable
by imprisonment up to six months,
or fined \$1000, or both**

SANCTIONS & PENALTIES

**Civil penalties of \$10,000 to \$30,000
for first violation**

**Civil penalties of \$30,000 to \$50,000
for each additional or subsequent
violation**

**Recovery of costs and attorney's fees
by the awarding department, or DGS.**

SANCTIONS & PENALTIES

Recovery by the state any difference between the contract amount and what the state's costs would have been if the contract had been properly awarded.

Assessed penalty not to exceed 10% of the contract amount.

Awarding Department Responsibilities

Maintain detailed procurement files.

Get your SB/DVBE advocate involved!

Notify OSDs early regarding suspected program abuse.

**Investigate allegations of,
or suspected program abuse.**

Awarding Department Responsibilities

**Remember the clock is running...
think Statute of Limitations
(Laches)**



Awarding Department Responsibilities

Submit a written report with the recommended action commensurate with the findings to OSDS within 60 business days

The written report is a public document.

We strongly suggest that your legal office or other appropriate office be consulted when preparing the report.

OSDS Responsibilities

Provide Assistance to State Departments

Revocation of the SB/DVBE Certification

Suspension from doing Business with the State

Request Civil Penalties and Recovery of Costs

Represent the State in OAH hearings

DVBE Substitutions Requirements

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DVBE Substitutions Requirements

- ✓ **Very *Simple* process**
- ✓ **Documentation, Documentation, Documentation**
- ✓ **What is a DVBE Substitution?**
- ✓ **Military & Veterans Codes: 999.5(e)**
- ✓ **What is the process?**
- ✓ **2 California Code of Regulations (DVBE Regulations) 1896.73**
 - ✓ **Before Award of contract**
 - ✓ **After Award of contract**

DVBE Substitutions Requirements

How the Prime can find a DVBE Subcontractor:

- ✓ **CaleProcure website**
- ✓ **DVBE community organizations**
- ✓ **Advocates, including CalVet**
- ✓ **Other DVBEs**

DVBE subcontractors shall be used unless a substitution is approved by the OSDs.

PCC 4107, 2 CCR 1896.73

Processing DVBE Substitution Requirements

The contractor shall simultaneously notify the DVBE and the awarding department of the intended substitution with the following in writing by certified mail:

- ✓ Reasons for the substitution
- ✓ The name and supplier number of the replacement subcontractor

**M&VC 999.5(e), PCC 4107, 4107.5
2 CCR 1896.73**

Processing DVBE Substitution Requirements

The DVBE has 5 days to oppose the substitution in writing

The awarding department shall grant the DVBE a hearing within 5 days from the receipt of the objection

Note: There is no OSDs involvement when the awarding department denies the substitution request.

PCC 4107, 4107.5, 2 CCR 1896.73

Elements of the DVBE Substitution Request Form

- ✓ **Contract Number and Description of Contract**
- ✓ **Contract Amount**
- ✓ **DVBE Subcontractor Commitment**
- ✓ **Date Contractor Requested DVBE Subcontractor Substitution**
- ✓ **Justification for Substitution**
- ✓ **Date the Department Sent Written Notice to DVBE Subcontractor**
- ✓ **Date Written Objections Were Received from DVBE (if any)**
- ✓ **Date Department Sent Notice of the Substitution Hearing and Date of Substitution Hearing (if applicable)**
- ✓ **SB/DVBE Advocate Signature**

Processing DVBE Substitution Requirements

- ✓ Email DVBE Substitution requests to osdshelp@dgs.ca.gov
- ✓ OSDS will email processed requests to SB/DVBE Advocate & Contracting Official within 3 days of receipt
- ✓ SB/DVBE Advocate/Contracting Official will notify the Prime & DVBE subcontractors

2 CCR 1896.73

Processing DVBE Substitution Requirements

Substitution approval reasons:

When the awarding department determines that the DVBE:

- ✓ **Did not perform in accordance with the plans and specifications: or,**
- ✓ **Has delayed or disrupted the progress of the work**

PCC 4107 & 2 CCR 1896.73

Processing DVBE Substitution Requirements

Substitution approval reasons cont.:

- ✓ DVBE becomes bankrupt, insolvent or goes out of business
- ✓ DVBE does not perform as listed in Bidder Declaration
- ✓ DVBE does not meet bond or license requirements
- ✓ DVBEs name is listed incorrectly
- ✓ DVBE not licensed as required

PCC 4107, 4107.5 & 2 CCR 1896.73

Processing DVBE Substitution Requirements

- ✓ **OSDS will email processed requests to SB/DVBE Advocate & Contracting Official within 3 days of receipt**
- ✓ **SB/DVBE Advocate/Contracting Official will notify the Prime & DVBE subcontractors**

2 CCR 1896.73

DVBE Substitutions Requirements

The DVBE substitution process shall not be used as an excuse for noncompliance with any provision of the law.

Contractors who proceed with the work pending a substitution decision may be subject to contract termination, recovery of damages, remedies and penalties.

**M&VC 999.9, PCC 10115.10 or 4110,
2 CCR 1896.73**



Questions?