

**California Code of Regulations,
Title 2, Division 2, Chapter 3, Subchapter 10.5**

§ 1896.73. Substitution of a DVBE

- (a) DVBE subcontractors shall be used per § 1896.70 unless a substitution is approved by the OSDS. A DVBE subcontractor shall be replaced by another DVBE to perform the work originally stated. The substitution shall maintain, at minimum, the level of participation goal stated in the bid. In the absence of a DVBE, the replacement shall be a certified small business.
- (b) The contractor shall simultaneously notify the DVBE and the awarding department of the intended substitution. The written notice shall contain the reasons for the substitution and be sent by certified mail. The contractor shall submit the following to the awarding department:
- (1) A copy of the written notice issued to the DVBE with proof of delivery. In the absence of proof of delivery, provide the certified mail receipts.
 - (2) A copy of the DV's consent or opposition to the substitution. In the absence of the consent or opposition, provide the returned and unopened certified mail.
 - (3) The name and supplier number of the business being substituted and the name and supplier number of the proposed replacement. If a DVBE cannot be identified as a replacement, the contractor shall document the absence of DVBEs. In this case, the replacement shall be a certified small business. This documentation shall include but is not limited to:
 - (A) Contact with the SB/DVBE Advocates from awarding department and the Department of Veterans Affairs regarding the absence of DVBEs to perform the specific work.
 - (B) Search results from the DGS website for DVBEs to perform the specific work.
 - (C) Communication with a DVBE Community Organization nearest the worksite regarding the absence of DVBEs, if applicable.
 - (D) Documented communication with DVBEs and small businesses describing the work to be performed, its percentage of the overall contract, the corresponding dollar amount, and their responses to the request.
- (c) The DVBE shall have up to five business days from the postmark date to consent or oppose the substitution. A copy of the DVBE's reply shall be sent simultaneously by certified mail to the contractor and awarding department.
- (d) When written oppositions to a substitution are filed, the awarding department shall grant the DVBE a hearing.

The hearing notice shall be issued within five business days from receipt of the opposition. If the awarding department grants the substitution, continue to § 1896.73(e).

(e) The awarding department shall submit the substitution request to the OSDS:

- (1) The request must meet the criteria as specified above or § 4107 of the Public Contract Code for Public Works.
- (2) The substitution request shall be accompanied by the hearing decision, when applicable.

(f) The OSDS will respond to substitution requests within three business days. The OSDS shall consent to the substitution of another DVBE, or in the absence of a DVBE, a certified small business in any of the following situations:

- (1) When the DVBE becomes bankrupt, insolvent or goes out of business.
- (2) When the DVBE does not perform as listed in the Bidder Declaration.
- (3) When the DVBE does not meet the bond requirements of the contractor.
- (4) When the DVBE's name is incorrect due to an inadvertent clerical error. In the case of public works contracts, compliance with § 4107.5 of the Public Contract Code is required.
- (5) When the DVBE is not licensed as required by any State of California regulatory agency.
- (6) When the awarding department, or its duly authorized officer, determines that the DVBE:
 - (A) Did not perform in accordance with the plans and specifications; or,
 - (B) Has delayed or disrupted the progress of the work.

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

This includes, but is not limited to, the Subletting and Subcontracting Fair Practices Act (§ 4100 et seq., Public Contract Code) or any contract requirements relating to substitution of subcontractors.

(h) Contractors who proceed with work pending a substitution decision may be subject to contract termination, recovery of damages under rights, remedies and penalties. This is outlined in § 999.9 of the Military and Veterans Code, § 10115.10 of the Public Contract Code or § 4110 of the Public Contract Code (applies to public works only).

NOTE:

Authority cited: §§ 14600 and 14615, Government Code; §§ 10115.3(b) and 10295, Public Contract Code; and § 999.5(e) and (f), Military and Veterans Code.

Reference: §§ 10115.1 and 10115.2, Public Contract Code; and §§ 999(b)(9) and 999.5(f), Military and Veterans Code; and *Monterey Mechanical Co. v. Wilson*, 125 F.3d 702 (9th Cir. 1997), rehearing denied, ___ F.3d ___ (March 9, 1998).