Construction Policy Bulletin

CPB 07-2 Disabled Veteran Business Enterprise Substitution

References:	*Construction Manual*, Section 8-3,	"Disabled Veteran Business Enterprise"
	Construction Manual, Section 3-801C,	"Substitution Process"
	California Code of Regulations	"Title 2, Part 1896.64(c)"
	Contract Special Provisions	"Addendum No. 1"

Effective Date: April 24, 2007

Approved: ROBERT PIEPLOW
Chief
Division of Construction

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Background

The California Department of Transportation (Caltrans) encourages Disabled Veteran Business Enterprise (DVBE) participation in the development of Caltrans transportation projects. Consistent with Public Contract Code Section 10115, Caltrans has established a statewide overall goal of 3 percent DVBE participation. In addition, Caltrans has established a goal of 3 percent participation on individual projects, which is considered a project goal.

Existing Procedure

At bid time, contractors are required to provide evidence that the 3 percent project goal has been met or that a good faith effort has been made by the contractor in an effort to reach the goal. After contract award, resident engineers are to ensure that the prime contractor utilizes those DVBEs who are listed at bid time. If a prime contractor requests a substitution of any listed DVBEs, the resident engineer must make sure that either the prime contractor replaces the original DVBE with another DVBE or that the prime contractor demonstrates that a good faith effort was made to replace the original DVBE.

Upon contract completion, prime contractors must prepare and submit Form CEM-2402(S), "Final Report – Utilization of Disabled Veteran Business Enterprises (DVBE) State Funded Projects Only." If the contractor fails to submit the completed form, it is considered a missing document and an administrative withhold is applicable at the time of the payment after acceptance of the contract.

New Procedure

Effective April 24, 2006, prime contractors were no longer required to demonstrate that a good faith effort was made to replace listed DVBEs. Prime contractors must follow the following process if substitution of a listed DVBE becomes necessary.

- The contractor must provide a written request for substitution to the resident engineer. The written request must include:
  1. An explanation of the reason for substitution and, if applicable, the reason a non-DVBE is proposed for use.
  2. A written description of the business to be utilized in place of the listed DVBE including its status as a sole proprietorship, partnership, corporation or other entity; and if applicable, the proof of DVBE certification by the Department of General Services that includes the firm's certification number and status.
  3. Details about the work performed and the dollar value of the work to be performed by the substituted DVBE.
- The resident engineer must provide the listed DVBE with written notice of the prime's request to substitute them. The notice must be sent by certified or registered mail.
- The listed DVBE is given five days in which to object to the substitution. If the listed DVBE objects, the district schedules a hearing and provides the prime and the listed DVBE firm with five days prior written notice.
- If the DVBE does not object to the substitution, the resident engineer notifies the prime contractor, in writing, of the approval of the substitution.

The resident engineer may approve the DVBE substitution:

- When the listed DVBE, after having had a reasonable opportunity to do so, fails or refuses to execute a written contract; when that written contract based upon the general terms, conditions, plans and specifications for the project involved or the terms of that subcontractor's written bid, is presented to the DVBE by the prime contractor.
- When the listed DVBE becomes bankrupt or insolvent, or goes out of business.
- When the listed DVBE refuses to perform their subcontract.
- When the listed DVBE fails or refuses to meet the bond requirements of the prime contractor.
- When the prime contractor demonstrates to Caltrans that the name of the DVBE was listed as the result of an inadvertent clerical error.
- When the listed DVBE is not licensed pursuant to any applicable licensing requirement of any regulatory agency of the State of California.
- When Caltrans determines that the work performed by the listed DVBE is substantially unsatisfactory and not in substantial accordance with the plans and specifications, or that the DVBE is substantially delaying or disrupting the process of the work.

Unless the prime contractor receives prior written authorization, the substitution is considered improper and the prime contractor is subject to a withhold of the entire amount of the work performed or supplied by the listed DVBE. In addition, improper substitution of those DVBE subcontractors listed at bid time may also subject the contractor to a penalty of 0 – 10 percent of the subcontract involved pursuant to the Subcontracting and Subletting Fair Practices Act. Refer to Section 8-303(C) of the *Construction Manual* for the appropriate substitution process.

At project completion, the prime contractor is no longer required to submit Form CEM 2402(S), "Final Report – Utilization of Disabled Veteran Business Enterprises (DVBE) State Funded Projects Only."

If you have questions regarding the substitution process, please contact Angela Shell, Construction Division, at (916) 425-5853.