

## Section 3 Disadvantaged Business Enterprises and Disabled Veteran Business Enterprises

### 8-301 General

### 8-302 ~~Specifications, Regulations and Statutes~~ Terms Used in Construction

8-302A Commercially Useful Function

8-302B Underutilized Disadvantaged Business

### 8-303 ~~Monitoring and Enforcement Activities During Construction~~ Before Work Begins

8-303A ~~DBE and DVBE Listing~~ Disadvantaged Business Enterprise and Disabled Veteran Business Enterprise Commitment Form

8-303B ~~Subletting and Subcontracting or Listing~~ Versus Disadvantaged Business Enterprise and Disabled Veterans Business Enterprise Listing Commitment Form

8-303C ~~When the Listed DBE or DVBE Does Not Perform the Work~~ Preconstruction Conference

~~8-303D Monthly DBE Trucking Verification on Federal Aid Contracts~~

~~8-303E Prompt Payment Clauses~~

~~8-303F Final Report, Use of DBE or DVBE, First Tier Subcontractors~~

~~8-303G Disadvantaged Business Enterprises Certification Status Change (Federal Aid Contracts)~~

### 8-304 ~~Adding, Removing, or Substituting DBE or DVBE Subcontractors~~ Activities During Construction

8-304A ~~Adding DBEs or DVBEs~~ Monitoring and Enforcement

8-304A (1) Monthly DBE/UDBE Trucking Verification Form

8-304A (2) When Listed DBE or DVBE Does Not Perform the Work

8-304B ~~Removing and Substituting on of Listed DBEs or DVBEs~~ Firms

8-304B (1) Underutilized Disadvantaged Business Enterprise Substitutions

8-304B (2) Disadvantaged Business Enterprise Substitutions

8-304B (3) Disabled Veteran Business Enterprise Substitutions

8-304C Adding Disadvantaged Business Enterprises or Disabled Veteran Business Enterprises

### 8-305 ~~Caltrans Civil Rights Program~~ Forms Required After Contract Acceptance

8-305A Final Report, Use of Disadvantaged Business Enterprises and Disabled Veteran Business Enterprises, First-Tier Subcontractors

8-305B Disadvantaged Business Enterprises Certification Status Change (Federal-Aid Contracts)

### 8-306 ~~Example 8-3.1 Second Notice, Contractor Has Failed To Respond to Verbal Notice on Nonuse of DBE~~ Caltrans Office of Business and Economic Opportunity

Example 8-3.1 Second Notice, Contractor Has Failed to Respond to Verbal Notice on Nonuse of Disabled Veteran Business Enterprise

This manual is being updated to reflect changes from the 2006 to the 2010 Standard Specifications. Bracketed section numbers refer to the 2006 Standard Specifications.

### Section 3 Disadvantaged Business Enterprises and Disabled Veteran Business Enterprises

#### 8-301 General

Caltrans' policy is to ensure equal opportunity in the award and performance of its contracts. Part of this policy ~~involves~~ includes a program ~~programs~~ designed to increase the use of disadvantaged business enterprises (DBEs) on federally funded contracts and disabled veteran business enterprises (DVBEs) on state-funded ~~construction~~ contracts.

~~For the overall Caltrans federally assisted program, Caltrans establishes an annual participation goal by DBEs. Federal regulations define DBEs as firms owned and controlled by individuals who are both socially and economically disadvantaged. Additionally the state has adopted regulations that call for the use of project goals for DVBEs. The DVBE is a state mandated opportunity program for disabled veterans and applies to contracts financed solely with state funds.~~ For the state's federally assisted transportation program, Caltrans establishes an annual overall participation goal for DBEs. Caltrans strives to meet the annual goal through varying individual contract goals that contractors must either meet or conduct a good faith effort to meet during the bidding process.

State law defines DVBEs as firms owned, managed, and controlled by one or more disabled veterans. State law requires Caltrans to ensure at least 3 percent DVBE participation in its contracting dollars expended annually. Caltrans strives to meet this requirement by establishing individual DVBE participation requirements on state-funded contracts. Contractors must meet the contract requirement to be awarded a state-funded contract.

~~Caltrans Civil Rights evaluates projects to be advertised and, as appropriate, assigns separate goals for DBEs and DVBEs. Although one overall Caltrans goal exists for DBE participation, individual contract goals will vary. The advertisement specifies individual contract goals. Contract g~~ Goals are set based upon the type of work in the contract and the availability of DBE and non-DBE subcontractors firms to participate in the bidding process in the geographical area of the contract. DVBE contract participation goals requirements are vary from 3 percent to 5 percent on all state-funded projects depending on the dollar value of the overall project. Contracts may also include a DVBE bid incentive based on the percentage of the commitment made by the bidder.

For every advertised contract containing goals or percentage requirements, the contractor must submit information to Caltrans during the bidding process regarding the proposed use of DBEs or DVBEs. ~~Civil Rights~~ The contractor's proposal is evaluated ~~and this information prior to award of a contract~~ to see if the contract goal requirement has been met or if a good faith effort to use DBEs ~~or DVBEs~~ has been made, as applicable. If the low bidder has not met the contract ~~goal requirement~~ or

shown good faith efforts ~~to do so~~, the contract may be awarded to the next low bidder that meets these requirements. Once a contract is awarded, the bidder's statement of intent or good faith effort is a commitment that becomes a contract requirement.

Projects funded only ~~by the state~~with state funds have no specific requirement for the use of DBEs. Likewise, projects funded ~~only by the~~with federal government~~federal transportation funds~~ have no specific requirement for the use of DVBEs. DBEs and DVBEs are not interchangeable. Consequently, projects funded only by the state cannot use a DBE to ~~make meet~~ the ~~goal~~ DVBE requirement, and projects funded ~~only by the~~with federal government~~transportation funds~~ cannot use a DVBE to ~~make meet~~ the DBE goal.

Some contracts do not have DBE or DVBE goals. However, Caltrans ~~does still~~ encourages the use of DBEs and DVBEs on these contracts, and the bidders are urged to obtain DBE or DVBE participation.

The contract contains the Caltrans DBE or DVBE requirements. Specific restrictions exist regarding the removal and replacement of both DBEs and DVBEs listed on the contractor's commitment documents provided at the time of bid submission. DBE or DVBE requirements are in addition to the requirements of Sections 4100-4114, "Subletting and Subcontracting Fair Practices Act" (Fair Practices Act), of the Public Contract Code, which are described in Section 3-507C, "The Subletting and Subcontracting Fair Practices Act," of the Construction Manual.

### **8-302 Specifications, Regulations and Statutes Terms Used in Construction**

~~Federal regulations require the DBE program, and state laws require the DVBE program. The special provisions for each contract contain the Caltrans DBE or DVBE requirements. Some contracts will have established goals; others will contain a statement urging the contractor to use DBE or DVBE firms to the maximum extent possible. Specific restrictions exist regarding the removal and replacement of both DBEs and DVBEs listed on the contractor's utilization plan at the time of project award. DBE or DVBE requirements are in addition to the requirements of Section 4100 of the Public Contract Code, "Subletting and Subcontracting Fair Practices Act," described in Section 3-801C, "The Subletting and Subcontracting Fair Practices Act," of the Construction Manual (manual).~~

#### **8-302A Commercially Useful Function**

- DBE—a DBE performs a commercially useful function when it does all of the following:
  - o Performs at least 30 percent of the total cost of its contract with its own work force and does not subcontract out portions of its contract work that are greater than normal industry practices for the type of work performed.
  - o Performs, manages, and supervises the work involved.
  - o Negotiates prices, determines quantity and quality, orders materials and supplies, pays for the materials and supplies, and installs the materials where applicable.
- DVBE—a DVBE performs a commercially useful function when it does all of the following:

- o Is responsible for the execution of a distinct element of the contract.
- o Carries out the obligation by actually performing, managing, or supervising the work involved.
- o Performs work that is normal for its business services and functions.
- o Is responsible with respect to products, inventories, materials, and supplies required for the contract; for negotiating price; determining quality and quantity; and ordering, installing, if applicable, and making payment.
- o Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.

A DBE or DVBE firm does not perform a commercially useful function if its role on the contract is limited to being an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of participation.

#### 8-302B Underutilized Disadvantaged Business

An underutilized disadvantaged business entity (UDBE) is a certified DBE firm that is recognized as being in one or more of the following DBE categories: Black American, Asian-Pacific American, Native American, or Women.

In a 2007 Caltrans-led disparity study conducted to determine if disparity existed in the use of one or more DBE categories, the four categories above were determined to be underutilized in the construction industry. To achieve greater participation in the four groups, Caltrans set UDBE goals on contracts from February 27, 2009 through June 14, 2012.

### **8-303 Monitoring and Enforcement Activities During Construction Before Work Begins**

~~The following procedures are to be used in the monitoring and enforcement of the subcontracting, DBE or DVBE requirements and the prompt payment clauses of the special provisions. This section contains several forms or listings that should be compared against each other and analyzed for accuracy.~~

#### 8-303A DBE and DVBE Listing Disadvantaged Business Enterprise and Disabled Veteran Business Enterprise Commitment Form

~~The resident engineer will receive the approved list of DBEs or DVBEs listed by the bidder for project award. If the list has not been provided or is incomplete, the resident engineer must contact the district labor compliance officer to have it available before the preconstruction conference. The approved list is based on the information the contractor submitted before, and as a condition of, contract award. Remember that the percentage specified in the original contract advertisement may differ from the approved listing, which is a specific contract commitment from the contractor.~~

~~The resident engineer must monitor subcontractor use to ensure the contractor uses the DBEs or DVBEs listed. At the preconstruction conference, review the list with the prime contractor and other attending parties. Unless the work is performed or supplied by the listed DBEs or DVBEs, contractors are not entitled to any payment for work or materials.~~

~~On federal aid projects, if the contractor did not commit to using DBEs, monitoring or enforcement activities are not required. However, at contract completion, the contractor~~

~~must submit Form CEM 2402 (F), “Final Report—Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subcontractors,” and Form CEM 2403 (F), “Disadvantaged Business Enterprises (DBE) Certification Status Change.” If the form is not submitted, a \$10,000 deduction for non-compliance will be taken on the contract after acceptance. On contracts funded solely with state funds, if the contractor did not commit to using DVBEs, monitoring or enforcement activities are not required. However, the contractor must still submit Form CEM2402 (S), “Final Report—Utilization of Disabled Veteran Business Enterprises (DVBE).”~~

The DBE or DVBE commitment form provides the resident engineer with a listing of specific work to be done or materials to be furnished by specific DBEs or DVBEs and is based on information the contractor submitted during the bidding process. The resident engineer will receive the approved commitment of DBE or DVBE participation in the award package. For DBE participation commitments, bidders use Form DES OE-0102.10D, “Caltrans Bidder - DBE - Commitment.” For DVBE participation commitments, bidders use Form DES-OE-0102.5, “Certified DVBE Summary.” The percentage specified in the original contract advertisement may differ from the approved listing, which is a specific contract commitment from the contractor.

Review the commitment forms with inspection staff before work begins to ensure that field staff know who should be performing DBE or DVBE contract work. If the commitment form has not been provided in the award package or is incomplete, the resident engineer must contact the district labor compliance officer or the office engineer.

~~8-303B~~ Subletting and Subcontracting or Listing Versus DBE Disadvantaged Business Enterprise and DVBE Disabled Veteran Business Enterprise Listing Commitment Form

Do not construe the commitment of DBE or DVBE subcontractors as a request to subcontract or a notice of intent to subcontract as required by Section 5-1.13 [8-1.01], “Subcontracting,” of the *Standard Specifications*. However, the listing approved form does equate to a commitment from the contractor to meet the DBE or DVBE ~~use~~ requirements of the contract. In those instances where a DBE or DVBE subcontractor exceeds the dollar figure threshold (half of 1 percent of the total bid, or \$10,000, whichever is greater) specified in the subletting and subcontracting law Fair Practices Act (half of 1 percent of the total bid or \$10,000, whichever is greater), the DBE or DVBE must also be listed on the “list of subcontractors list.” Conversely, a DBE or DVBE whose value of work falls below the subletting and subcontracting law threshold will not be listed on the list of subcontractors subcontractor list, per in accordance with the subletting and subcontracting law Act. Because the DBE or DVBE may not be on the list of subcontractors subcontractor list in this instance, the DBE or DVBE listing and list of the subcontractors list may not match. First-tier subcontractors listed on the contractor’s DBE or DVBE use plan must be listed on Form CEM-1201, “Subcontracting Request.”

~~The contractor can use additional DBEs or DVBEs by following the standard subcontractor or supplier requirements of the contract, taking into consideration the requirements of the Subletting and Subcontracting Fair Practices Act. The contractor cannot, however, eliminate a DBE or DVBE from the approved DBE or DVBE use plan without written Caltrans’ approval to do so, even if the work must be done with the contractor’s own forces. For the procedures for handling contractor’s requests for changes, see Section 8-304, “Adding, Removing, or Substituting DBE or DVBE~~

Subcontractors,” of this manual and Section 3-8, “Prosecution and Progress,” of this manual. To check for irregularities, the resident engineer will compare the subcontractors and contract items listed on Form CEM-1201 with the contractor’s DBE or DVBE use plan and the Subletting and Subcontracting listing.

To cross-check DBE or DVBE commitments, compare the subcontractors and contract items listed on the subcontractor list and Form CEM-1201 with the approved DBE or DVBE commitment forms. Identify any irregularities during the preconstruction conference.

#### 8-303C When the Listed DBE or DVBE Does Not Perform the Work Preconstruction Conference

The DBE or DVBE use plan furnished by the contractor, together with any authorized changes made during the life of the contract, provides the resident engineer with a listing of work to be done or materials to be furnished by specific DBEs or DVBEs. If Caltrans personnel observe that any other businesses than the listed ones are doing the work or providing the materials, promptly notify the contractor in writing that an apparent violation is taking place. If you make an initial verbal warning, note this fact in the resident engineer’s daily report. Also, for this work, hold an administrative deduction on the next estimate in the amount listed on the DBE or DVBE use plan.

If the first notice is ineffective for any reason, send another written notice describing the violation to the contractor. Include a warning that failure to comply with the DBE or DVBE contract requirements will result in a withhold in the amount of the item of work(s) listed or in contract termination. For a sample copy of such a letter, see Example 8-3.1, “Second Notice, Contractor Has Failed to Respond to Verbal Notice on Nonuse of DBE,” at the end of this section.

If the written notice fails to achieve results, the resident engineer will submit to the district labor compliance office a memorandum noting the following:

- The apparent violation
- Any verbal action taken
- The contractor’s subsequent action or inaction
- A copy of the written notice previously sent to the contractor

The district labor compliance construction office should review for consistency the actions taken and then forward this documentation to the Division of Construction labor compliance unit and the construction field coordinator. Include any district recommendations for action. The Division of Construction will notify Civil Rights. When necessary, Civil Rights will investigate the apparent violation and notify the federal authorities as appropriate. This process applies to federal DBE and state DVBE funded projects.

The actions described above are in addition to any that must be taken for violations of the subcontracting provisions of the Standard Specifications and of the Subletting and Subcontracting Fair Practices Act.

During the preconstruction conference, review the commitment details with the prime contractor and other attending parties. Inform the contractor of the contract requirements to use the committed DBE or DVBE firms or go through the applicable substitution process. Also inform the contractor that unless the work is performed or

supplied by the listed DBEs or DVBEs or a substitution is approved, the contractor is not entitled to any payment for work or materials or may be subject to a 10 percent contract withhold. The preconstruction conference is a good opportunity for the prime contractor to inform Caltrans staff of any known issues prior to the work starting. If the contractor identifies any issues, follow the process identified in Sections 8-304B and 8-304C of this manual.

### **8-304 Adding, Removing, or Substituting DBE or DVBE Subcontractors Activities During Construction**

The following procedures cover any changes to the DBE or DVBE listing provided by the prime contractor before award of the contract.

#### **8-304A Adding DBEs or DVBEs Monitoring and Enforcement**

Caltrans is required by federal and state regulations to monitor worksites to ensure work committed to a DBE or DVBE is actually being performed by the respective firms through ensuring a commercially useful function. For federally funded projects, the resident engineer must certify in writing that a field review of DBE records occurred and the worksite was monitored by Caltrans staff.

The following procedures must be used by field staff to monitor and enforce the DBE or DVBE requirements of the contract, including prompt payment.

1. When a DBE or DVBE firm performs work on the contract, inspection staff must document in the daily inspection report the name of the firm and the associated contract items performed. Cross-check the inspection reports against commitment forms to ensure the appropriate firm is performing the work or providing the materials.
2. Interview workers of DBE or DVBE subcontractors and confirm with the district labor compliance officer that certified payroll records have been received for the DBE or DVBE, if applicable. For additional information on conducting interviews, refer to Section 8-102A (3), "Interviews With Contractor Personnel," of this manual.
3. If the DBE or DVBE firm is a materials supplier, review any available documents such as delivery confirmation reports and canceled payment checks to confirm that the DBE or DVBE supplied the materials. If these documents are not available in normal project records, request that the contractor provide them to Caltrans.
4. If trucking is part of the contractor's DBE commitment, identify trucking firms and drivers and associated items of work for each trucking firm on daily inspection reports. In addition, ensure the contractor submits Form CEM-2404F, "Monthly DBE/UDBE Trucking Verification," by the 15th of the month for the previous month's trucking activities. Randomly confirm the information on these forms by requesting copies of weight tickets and canceled payment checks from the contractor. Cross-check the information against daily inspection reports as well. Refer to Section 8-304A (1), "Monthly DBE/UDBE Trucking Verification Form," below for additional information.
5. Do not allow a contractor to terminate or substitute a listed DBE or DVBE from the contract without written consent. For information on the substitution process, refer to Section 8-304B below.

6. Withhold contract funds, as applicable, for improper substitutions, terminations, or failure to meet contract commitments.
7. Bring to the attention of the district labor compliance officer any complaints of failure by the contractor to promptly pay DBE or DVBE firms.
8. Require the contractor to notify you in writing of any changes in DBE certification status; i.e., a DBE becomes decertified or a business entity becomes certified as a DBE. For additional information on changes in DBE certification status, refer to Section 8-304B (2) below.
9. Consult with the district labor compliance officer for questions on implementing enforcement activities.

8-303D-304A (1) Monthly DBE/UDBE Trucking Verification on Federal Aid Contracts Form

When DBE trucking ~~is listed~~ is approved on the commitment list as a goal on the DBE use plan, the contractor must submit to the resident engineer Form CEM-2404-(F), “Monthly DBE/UDBE Trucking Verification,” before the 15th of each month. The form must ~~show~~ include the following for all trucking performed during the reporting period:

- The truck owner’s name.
- The California identification (CA) number issued by the California Highway Patrol.
- The truck owner’s DBE certification number.
- The company name and address.
- The commission or amount paid.
- The date paid.
- The lease arrangement if applicable.

If the prime contractor fails to submit the form, the resident engineer must ~~make on the monthly pay estimate~~ hold an administrative deduction for missing documents.

In determining how much credit percentage to allow for the trucking company toward the DBE contract goal, use the following factors:

- The listed DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract, using trucks it owns, insures, and operates, and using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE that leases trucks from another DBE firm receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may also lease trucks from a non-DBE firm or a non-DBE owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE

does not receive credit for the total value of the transportation services provided by the lessee because a DBE is not providing these services.

- A lease must indicate that the DBE has exclusive use of and control over the truck. ~~This provision does not preclude the~~ The leased truck ~~from may~~ working for others during the term of the lease with the consent of the DBE, ~~so as~~ long as the lease gives the DBE absolute priority for use of the leased truck. (Generally, the lease must be long term and not for the specific project.)

~~8-303~~8-304A (2) *When the Listed DBE or DVBE Does Not Perform the Work*

If Caltrans personnel observe that any firms other than those listed are doing the work or providing the materials, promptly notify the contractor in writing that an apparent violation is taking place. If you make an initial verbal warning, note this fact in the resident engineer's daily report. Also, for this work, hold an administrative deduction on the next estimate for the dollar amount of work that should have been performed to date as listed on the DBE commitment for the specific firm. For DVBEs, hold an administrative deduction for 10 percent of the DVBE commitment for the specific firm.

If the first notice is ineffective for any reason, send another written notice describing the violation to the contractor. Include a warning that failure to comply with the DBE or DVBE contract requirements will result in a withhold in the full amount of the items of work listed ~~or in contract termination and a referral to the Department of General Services for investigation for contracts with DVBE commitments.~~ For a sample copy of such a letter, refer to Example 8-3.1, "Second Notice, Contractor Has Failed to Respond to Verbal Notice on Nonuse of DBE or DVBE," at the end of this section.

If the written notice fails to achieve results, submit to the district labor compliance office a memorandum noting the following:

- The apparent violation.
- Any verbal action taken.
- The contractor's subsequent action or inaction.
- A copy of the written notice previously sent to the contractor.

The district labor compliance ~~construction~~ office ~~should~~ reviews for consistency the actions taken and ~~then~~ forwards this documentation to the Division of Construction labor compliance unit and the construction field coordinator. Include any district recommendations for action. The Division of Construction will notify ~~Civil Rights~~ the Caltrans Office of Business and Economic Opportunity (OBE0). When necessary, ~~Civil Rights~~ OBE0 will investigate the apparent violation and notify the federal or state authorities as appropriate.

The actions described above are in addition to any that must be taken for violations of the subcontracting provisions of the *Standard Specifications* and of the ~~Subletting and Subcontracting~~ Fair Practices Act.

8-304B ~~Removing and Substituting~~ on of Listed DBEs or DVBEs ~~Firms~~

~~When the contractor requests that a DBE or DVBE that was listed for goal attainment be removed from the project, the following steps must be taken:~~

- ~~Before performing the work, the contractor must submit a written request to the resident engineer asking for approval to remove or substitute the listed firm. The~~

request must state the reason for the removal, and the reason must match one of the authorized situations specified in the contract's special provisions. (If the firm is a subcontractor covered under the "Subletting and Subcontracting Fair Practices Act" see Section 3.8, "Prosecution and Progress," of this manual.)

- ~~The resident engineer must review the request to confirm the stated facts. The resident engineer must then notify the listed DBE or DVBE of the contractor's request to substitute. The listed DBE or DVBE has five days to respond. If the DBE or DVBE does not respond within five days, and the reason for the substitution conforms to one of the specified reasons, the resident engineer may approve the substitution. If the DBE or DVBE that the contractor wants to substitute objects, a hearing will be scheduled. The district construction deputy director, or the appointed designee, will preside over this hearing. Both the prime contractor and the DBE or DVBE should attend the hearing and will subsequently be advised of the results as to whether the request is approved or disapproved.~~
- ~~If the contractor receives approval to substitute a listed DBE or DVBE, the contractor must attempt to replace the firm with another DBE or DVBE needed to meet the contract goal. If the contractor cannot find a replacement DBE or DVBE, the contractor must submit a description of its good faith efforts. In the situation of a good faith effort, the district construction deputy director must sign approval and authorization on Form CEM 2401, "Substitution Report for Disadvantaged Business Enterprise/Disabled Veteran Business Enterprise."~~
- ~~The resident engineer may approve the request to replace the DBE or DVBE if the contractor will meet or exceed the contract goal without the disputed DBE or DVBE or if all of the following conditions are met:
  1. ~~One DBE or DVBE is to be substituted for another DBE or DVBE, respectively. They are not interchangeable.~~
  2. ~~The same items of work are involved, or if different items, the dollar value is equal to or greater than that in the original commitment.~~
  3. ~~The new DBE or DVBE is certified at the time of replacement.~~A listing of certified firms is available through the district labor compliance office or Civil Rights site on the Internet at the following address: <http://www.dot.ca.gov/hq/bep/>  
Or, you can find the list by calling Civil Rights.  
Note that unless the new DBE or DVBE is certified, the substitution cannot be approved. An application for certification does not constitute certification.~~
- ~~If the conditions above are not met, requests for approval of a replacement firm must be evaluated based on the contractor's performance of good faith efforts to find a replacement firm. Forward such requests, along with the contractor's documentation of good faith efforts, for approval by the district construction deputy director or the appointed designee. The contractor's documentation must include the following:
  1. ~~The names and dates of each publication in which the prime contractor placed a request for DBE or DVBE participation for the project.~~~~

- ~~2. The names and dates of written notices sent to certified DBEs or DVBEs soliciting bids for the project.~~
  - ~~3. The methods and dates used for following up initial solicitations to determine with certainty whether or not the DBEs or DVBEs were interested.~~
  - ~~4. The items of work the prime contractor made available to DBE or DVBE firms. Where appropriate, the contractor should include any breakdown of contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate DBE or DVBE participation. Essentially, the prime contractor must demonstrate that it made enough work available to the firms to meet the DBE or DVBE goal.~~
  - ~~5. The names, addresses, and phone numbers of both the rejected DBE or DVBE firms and the firm selected for that work, as well as the reasons for the contractor's choice.~~
  - ~~6. Any efforts made to assist an interested DBE or DVBE in obtaining bonding, lines of credit, or insurance. Similarly, any technical assistance or information related to the project plans, specifications, and requirements that the contractor provided to the DBE or DVBE.~~
  - ~~7. Any efforts made to assist interested DBEs or DVBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the DBE or DVBE subcontractors purchase or lease from the prime contractor or its affiliate.~~
  - ~~8. The names of agencies contacted to provide assistance in contacting, recruiting, and using DBE or DVBE firms.~~
  - ~~9. Any additional data to support a demonstration of good faith efforts.~~
- ~~• Caltrans has consultant contracts with technical services contractors on federal aid projects to provide assistance to DBE subcontractors. The resident engineer can also use the services of the technical services contractor to help gather information for the substitution process or to encourage the subcontractor to perform the work so that no substitution is necessary. The resident engineer can also encourage the prime contractor to use the services of the technical services contractor in finding replacements for DBE subcontractors. For the names and addresses of the technical services contractors, see the DBE portion of the contract's special provisions. However, the prime contractor should not use technical services contractors as its sole effort to satisfy the good faith requirement.~~
  - ~~• The substitution request will be approved if such documentation indicates the contractor exerted a good faith effort to replace in kind the DBE or DVBE. If there is any reason to doubt the adequacy of the contractor's effort, consult the district or the Division of Construction. If the decision is not to approve the good faith efforts, the contractor must take such additional steps as are necessary to find a replacement firm. Advise the prime contractor that performance of the work without the resident engineer's prior written approval will result in an administrative deduction for the value of the work listed on the DBE or DVBE usage commitment. When the final review is complete and a decision is reached, the district will notify the resident engineer.~~

- ~~The resident engineer must give the contractor written notice of the decision. Send a separate written notification to the contractor regarding substitutions covered by the Subletting and Subcontracting Fair Practices Act. Place copies of all correspondence in the project's file.~~
- ~~Once the substitution has occurred, the resident engineer must prepare Form CEM-2401, "Substitution Report for Disadvantaged Business Enterprise/ Disabled Veteran Business Enterprise," and request the prime contract furnish a revised Form CEM-1201, "Subcontracting Request," if applicable.~~

The resident engineer must not allow a prime contractor to remove or substitute a listed DBE or DVBE firm without prior written consent from Caltrans. This includes allowing the prime contractor to self-perform work originally committed to a DBE or DVBE firm. Requests for substitution of a listed DBE or DVBE firm must be in writing.

#### 8-304B (1) Underutilized Disadvantaged Business Enterprise Substitutions

The UDBE substitution procedures apply to contracts advertised between February 27, 2009 and June 14, 2012. For contracts with UDBE participation, follow the process described below. The prime contractor is required to replace the listed UDBE with another certified DBE firm identified as underutilized or conduct a good faith effort to do so to the extent required to meet the original contract goal. For additional information on those DBE firms considered to be underutilized, refer to Section 8-302, "Terms Used in Construction," of this manual.

Require the contractor to submit a written request for substitution of a listed UDBE. Ensure the request cites one of the seven reasons outlined in Section 5-1.086, "Performance of UDBEs," of the special provisions. If the prime contractor requests substitution with a non-UDBE, the good faith effort must be included with the request and must address the eight information and supporting document items identified in the contract under "Disadvantaged Business Enterprises." The prime contractor's good faith effort must be reviewed and approved by the district construction division chief before approval of a substitution request. If the prime contractor fails to conduct a good faith effort to replace a listed UDBE with another UDBE, deny the substitution request.

Provide the listed UDBE with written notice of the prime contractor's request to substitute upon receipt of a request for substitution. The written notice must allow the listed UDBE at least 5 days to object to the substitution. If the UDBE objects and provides a timely response, the district must conduct a hearing on the substitution request. Provide the prime contractor and UDBE with at least 5 days' written notice of the scheduled hearing. If the UDBE does not object to the substitution or does not respond within the 5-day timeframe, give the prime contractor written notice of the substitution approval. For approval of the substitution, complete Form CEM-2401, "Substitution Report for Disadvantaged Business Enterprise (DBE) or Underutilized Disadvantaged Business Enterprise (UDBE)."

If the prime contractor replaces a listed UDBE without approval, withhold payment for the item(s) of work committed to the UDBE from the next progress payment. Send the prime contractor written notice of the improper substitution and payment withhold. If the UDBE is also a listed subcontractor pursuant to the Fair Practices Act, the substitution process must comply with the Act and with Section 3-501C (5), "Hearing Process for Substitution Violations," of the *Construction Manual*. If the prime

contractor is found in violation of the Act, the hearing officer may also assess a penalty of up to 10 percent of the subcontract amount.

8-304B (2) *Disadvantaged Business Enterprise Substitutions*

For DBE substitutions, follow the process listed below. The prime contractor is required to replace the listed DBE with another certified DBE or conduct a good faith effort to do so to the extent needed to meet the original contract goal.

Require the contractor to submit a written request for substitution of a listed DBE. Section 5-1.03, "Performance of Disadvantaged Business Enterprises," of the contract special provisions identifies the information required for a contractor-requested substitution. Review the contractor's written request and ensure it includes all of the following:

- One of the 11 reasons for substitution as identified in the special provisions.
- A copy of the 5-day notice from the contractor to the DBE regarding the substitution, including verification that the DBE received the notice.
- The DBE's response to the 5-day notice.
- If applicable, the contractor's good faith effort documentation addressing the eight requirements found in Section 2-1.12B(3), "Good Faith Efforts Submittal," of the *Standard Specifications*.

If the request for substitution does not include the required information, notify the contractor of the requirement to comply with the contract and do not proceed with the substitution request.

If the DBE objects to the 5-day notice of substitution, the district must conduct a hearing on the substitution request. The prime contractor and DBE must be provided at least 5 days' written notice of the scheduled hearing. If the DBE does not object to the substitution or does not respond to the contractor's notice within the 5-day timeframe, the substitution can occur with another DBE or non-DBE as a result of an approval of the good faith effort. To document written substitution approval, complete Form CEM-2401, "Substitution Report for Disadvantaged Business Enterprise (DBE) or Underutilized Disadvantaged Business Enterprises (UDBE)," and provide a copy to the contractor.

If the prime contractor replaces a listed DBE without written approval from the resident engineer, payment for the item(s) of work committed to the DBE must be withheld from the next progress payment. Send the prime contractor written notice of the improper substitution and payment withhold. In addition, if the DBE is also a subcontractor required to be listed at bid time by the Fair Practices Act, the substitution process must comply with Section 3-501C (5), "Hearing Process for Substitution Violations," of the *Construction Manual*. If the substitution is found to be in violation of the Act, the hearing officer may assess the prime contractor a penalty of up to 10 percent of the subcontract amount.

Federally funded contracts require the contractor to report a DBE firm that becomes certified or decertified during the course of the project. A DBE subcontractor that becomes decertified during the course of the project must notify the contractor in writing with the date of decertification. In the same manner, a subcontractor that becomes a certified DBE during the course of the project must notify the contractor in writing with the date of certification.

The prime contractor must notify the resident engineer if the contractor becomes aware of a DBE obtaining or losing its certification during construction.

The contractor must still honor contractual commitments with a DBE firm performing work on the contract even if the DBE loses its certification during construction. No substitution is required.

For federal reporting purposes only, DBE credit for Caltrans will be limited to payments made while the firm was certified. This has no effect on the Form CEM-2402F, "Final Report - Utilization of Disadvantaged Business Enterprises First-Tier Subcontractors," which should show the total paid to the DBE. For additional information on the final report, refer to Section 8-305A below.

#### 8-304B (3) Disabled Veteran Business Enterprise Substitutions

For contracts advertised on or after January 1, 2010, DVBE firms listed at the time of bid for participation credit must only be substituted with another DVBE firm. For contracts advertised on or after April 1, 2013, DVBE firms must be substituted with another DVBE or a small business firm in the demonstrated absence of an available DVBE firm. In addition, for all DVBE substitutions, Caltrans must receive approval from the Department of General Services (DGS) before allowing a contractor to proceed with the substitution.

Require the contractor to submit a written request for substitution. Review the request to ensure compliance with the requirements of Section 5-1.13C, "Disabled Veteran Business Enterprises," of the *Standard Specifications*. This includes citing one or more of the allowed reasons for substitution and providing copies of the following:

- Written notice of the substitution request provided to the DVBE firm and any response received.
- Documentation of the absence of DVBE substitutable firms, if applicable.
- The commitment quote from the replacement firm.
- The business information, items of work, and corresponding dollar value for the replacement firm.

The allowable reasons for substitution are as follows:

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 Section 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.

For contracts advertised prior to April 1, 2013, Caltrans provides the DVBE with written notice of the substitution request, using a traceable mailing method such as

registered, overnight, or certified mail, if the contractor's request does not already include documentation of such notice. The written notice gives the DVBE 5 working days to object, in writing, to the substitution and request a hearing with Caltrans.

Return to the contractor for correction requests that do not include the required information or do not indicate substitution with another DVBE or small business firm.

If the listed DVBE provides a written objection to a contractor's substitution request, within 5 working days of receipt of the objection, set a date for a hearing and send a notice to the contractor and DVBE of the date and location. Conduct the hearing in compliance with Section 3-507C (3), "Hearing Process for Substitutions," of the *Construction Manual*. If the listed DVBE does not respond to the notice of a contractor's request to substitute within 5 working days or does not object to the substitution, no hearing is required.

After resolving any issues with the substitution request and determining that the substitution may occur, complete Form CEM-2405, "Disabled Veteran Business Enterprise (DVBE) Substitution Request to the Department of General Services (DGS)," and send it to the Division of Construction, to the attention of the labor compliance program manager. Also send a copy to the district labor compliance manager. Include all supporting documents such as the contractor's substitution request; notice to the DVBE; DVBE's response, as applicable; request for hearing; and hearing decision. The Division of Construction labor compliance program manager reviews and signs the DVBE substitution form and forwards it to DGS for final review and approval or denial. DGS responds to the request within 3 business days. The Division of Construction notifies the district of DGS' final decision upon receipt.

Provide the contractor with notice of DGS' decision. If the substitution is approved by DGS and the new DVBE or small business is a first-tier subcontractor, ensure the prime contractor completes and submits an updated Form CEM-1201, "Subcontracting Request." If the substitution is denied by DGS, do not allow substitution of the DVBE originally listed.

Do not allow the proposed substitute DVBE or small business firm's work to occur until a substitution request has been approved by DGS.

If the contractor improperly substitutes a listed DVBE with a non-DVBE or non-small business, withhold 10 percent of the dollar value of the original listed DVBE participation. Send the prime contractor written notice of the improper substitution and payment withhold. In addition, if the DVBE is also a subcontractor required to be listed at bid time by the Fair Practices Act, the substitution process must comply with Section 3-501C (5), "Hearing Process for Substitution Violations," of the *Construction Manual*.

~~Clearly, substitution~~ Substitution of a listed DBE or DVBE may be a lengthy process. However, contractors are not entitled to either time adjustments or increased costs as a result of substituting the DBE or DVBE firm ~~the contractor originally listed for goal attainment~~.

Consult with the district labor compliance program manager for assistance with the substitution process for DBE or DVBE firms.

8-304AC Adding ~~DBEs~~ Disadvantaged Business Enterprises or ~~DVBEs~~ Disabled Veteran Business Enterprises

Caltrans permits and encourages the contractor to increase the amount of work to DBEs or DVBEs over what was originally listed for contract goal attainment commitment. If a portion of the work will be subcontracted, the contractor must comply with Section ~~8-1.01~~5-1.13, “Subcontracting,” of the *Standard Specifications* and with ~~Section 4100~~the Act. of the Public Contract Code “~~Subletting and Subcontracting Fair Practices Act.~~” For the procedures for subcontracting, see Section ~~3-83-507~~, “~~Prosecution and Progress~~Subcontracting,” of this manual. Place a copy of the contractor’s request in the project file for later reference when approving Form CEM-2402-(F), “Final Report ~~—~~ Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors,” or Form CEM-2402-(S), “Final Report ~~—~~ Utilization of Disabled Veteran Business Enterprises (DVBE) State Funded Projects Only.”

### **8-305      Forms Required After Contract Acceptance**

The following forms are required after contract acceptance. Refer to the *Standard Specifications* for the specific due date of each form.

#### 8-303305A F      Final Report, Use of Disadvantaged and Disabled Veteran Business Enterprises DBE or DVBE, First-Tier Subcontractors

The specifications require the contractor to submit to the resident engineer either Form CEM-2402F, “Final Report - Utilization of Disadvantaged Business Enterprises First-Tier Subcontractors,” or Form CEM-2402S, “Final Report - Utilization of Disabled Veterans Business Enterprises (DVBE) State Funded Projects Only,” upon completion of the contract work. These forms, ~~“the final DBE or DVBE reports,”~~ final reports provide key information required to ~~initiate project closure and payment~~ certify that DBE and DVBE firms participated on the contract and were paid for the work performed.

~~During the contract, the contractor must maintain information regarding assignments to all first tier subcontractors and all DBE or DVBE firms, regardless of tier. When filling out the final DBE or DVBE report, the contractor must~~ Ensure the final utilization report includes the following information:

- The names and addresses of these DBE or DVBE firms and first-tier subcontractors for federal-aid projects.
- The date each of these firms completed its the portion of the work.
- The date of final payment to these firms.
- The total dollar figure paid to each firm.
- All actual expenditures (not the contract item prices) paid to DBEs or DVBEs.
- Any lower-tier DBEs or DVBEs that were used, even if the firms were not originally listed in the bid submittals for the purposes of goal attainment.

If the prime contractor is a DBE or DVBE firm, the ~~records~~ reports must also show the date of work performed by its own forces, along with the corresponding dollar value of the work claimed toward DBE or DVBE ~~goals~~ commitments. Require the contractor to submit a complete form if any of the required information is not included.;

~~The resident engineer must compare~~ Compare the contractor’s original dollar commitment with the ~~final attainment~~ amount shown on the final DBE or DVBE report. ~~The resident engineer must also verify that the dollar amount reflects the actual~~

~~dollar value paid to each DBE or DVBE firm. This verification should include any changes made in planned work scheduled for each DBE or DVBE firm.~~ Review the contractor's calculations to verify that the appropriate amount is credited for participation of DBE suppliers and truckers. ~~Below is the criteria~~ are the criteria for crediting DBE supplier and trucker participation:

- One hundred percent credit if the materials or supplies are obtained from a DBE manufacturer.
- Sixty percent credit if the materials or supplies are obtained from a DBE regular dealer.
- Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies, if they are obtained from a DBE that is neither a manufacturer nor regular dealer. Code of Federal Regulations, Title 49, Section 26.55 defines "manufacturer" and "regular dealer."
- One hundred percent credit for the total value of the transportation services the DBE provides on the contract using trucks it owns, insures, and operates using drivers it employs or leases from another DBE.
- Actual fee or commission amount for participation by non-DBE trucks leased by DBEs.

If any question exists concerning the report's accuracy, require a written explanation from the contractor. ~~This narrative report~~ The response must explain any differences between the initial plan and the final summary, unless the contractor's comments on the final DBE or DVBE report are in sufficient detail to provide the explanation. Examples of items the contractor would need to explain in writing include why the names of lower-tier subcontractors, the work items, or dollar figures do not match the contractor's initial plan. Attach the narrative report to the final DBE or DVBE report. The resident engineer must review the completed final DBE or DVBE report for completion and accuracy before signing.

~~The narrative report~~ written explanation is not required for projects that do not have specific percentage goals for DBE or DVBE participation or final projects that show no change from the DBE or DVBE use plan commitment.

For federally funded projects only, if the contractor's DBE attainment falls short of the contract commitment, hold only the amount of contract funds necessary to meet the original DBE contract goal. If funds were previously withheld from the contractor for failure to meet DBE participation requirements, continue to hold only the amount of contract funds necessary to meet the original DBE contract goal. Any penalties previously assessed for as a result of violations of the Subletting and Subcontracting Fair Practices Act are not returned to the contractor, even if the contractor meets the DBE commitment with other DBE firms. For contracts with DVBE participation commitments, do not return previously withheld funds to the contractor. If the contractor does not attain the original goal for reasons beyond their control, then no funds should be withheld. For example, if a contract change order eliminates all or a portion of an item originally designated to be performed by a DBE or DVBE, this situation is beyond the contractor's control. Conversely, if a contract change order increases the work allocated to a DBE or DVBE, the contractor is not required to have the DBE or DVBE perform the work, but should be encouraged to do so. Consult with

the district labor compliance manager for questions regarding withheld funds for DBE or DVBE participation.

If the contractor does not attain the original goal for reasons beyond their control, then no funds should be withheld. For example, if a contract change order eliminates all or a portion of an item originally designated to be performed by a DBE or DVBE, this situation is beyond the contractor's control. Therefore, no funds should be withheld. Conversely, if a contract change order increases the work allocated to a DBE or DVBE, the contractor is not required to have the DBE or DVBE perform the work, but should be encouraged to do so. If no issues with the final utilization reports are identified, the resident engineer signs the final report. For federally funded contracts, the signature of the resident engineer provides written certification of DBE participation through onsite monitoring and record review activities. The final DBE or DVBE report (together with the contractor's narrative) must be sent to the district and then forwarded to the Office of Business and Economic Opportunity by email at [SmallBusiness\\_Advocate@dot.ca.gov](mailto:SmallBusiness_Advocate@dot.ca.gov) or fax at (916) 324-1949. A copy should also be sent to the district construction office.

If the contractor does not submit Form CEM 2402(F), "Final Report - Utilization of Disadvantaged Business Enterprises (DBE), First Tier Subcontractors," upon completion of a federally funded contract, the final utilization reports, take the specified appropriate deduction must be taken on the after-acceptance estimate. For federal-aid contracts, withhold \$10,000. For state-funded contracts, initiate an "other outstanding document" (OOD) withhold. For more information on these withholds refer to Section 3-907A, "Payment Before Final Estimate," of this manual. This deduction can be executed by entering an "equal employment opportunity" (EEO) code in Part 2, "Deductions," of Form CEM 6001, "Project Record Estimate Request." A value of \$10,000 must be entered in the "amount" field of this form. Return the withhold to the contract when a completed report is submitted and verified. Upon satisfactory completion and submittal of the outstanding report, the money will be returned to the contractor.

The final DBE or DVBE report (together with the contractor's narrative) must be sent to the district and then forwarded to the Division of Construction.

For how to handle the proposed final, semifinal, and final estimates, see Section 39, "Measurement and Payment," of this manual.

#### 8-303G5B Disadvantaged Business Enterprises Certification Status Change (Federal-Aid Contracts)

Federally funded contracts require the contractor to report a DBE firm that becomes certified or decertified during the course of the project. A DBE subcontractor that becomes decertified during the course of the project must notify the contractor in writing with the date of decertification. In the same manner, a subcontractor that becomes a certified DBE during the course of the project must notify the contractor in writing with the date of certification.

The prime contractor must notify the resident engineer if the contractor becomes aware of a DBE obtaining or losing its certification during construction. To document and report changes to DBE certification, the contractor must complete Form CEM-2403F, "Final Report - Disadvantaged Business Enterprises (DBE) Certification Status Change." The form must list the amount of money paid to the DBE while it was certified.

~~The contractor must still honor contractual commitments with a DBE firm performing work on the contract even if the DBE loses its certification during construction. No substitution is required.~~

~~For federal reporting purposes only, DBE credit for Caltrans will be limited to payments made while the firm was certified. This has no effect on the Form CEM-2402(F), “Final Report—Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors” which should show the total paid to the DBE.~~

~~The contractor must submit the form at the contract’s completion, regardless of any changes in DBE status. If no change in DBE status occurs during the life of the contract, the contractor must write, “no change” across the fields of Form CEM-2403F. If the prime contractor fails to submit the form, the resident engineer must include this report as part of the OOD deduction when preparing the after-acceptance payment.~~

~~For how to handle the proposed final, semifinal, and final estimates, see Section 39, “Measurement and Payment,” of this manual.~~

### **8-305-306 Caltrans ~~Civil Rights~~ Office of Business and Economic Opportunity**

Caltrans ~~Civil Rights~~ Office of Business and Economic Opportunity (OBEO) develops policy related to and generally administers and oversees the DBE program for Caltrans. Additionally, among other duties, ~~Civil Rights~~OBEO certifies DBEs, publishes the lists of the certified firms, and determines whether those firms meet the requirements of applicable federal regulations. ~~The California Department of General Services~~DGS certifies DVBEs, and determines whether these firms meet the requirements of applicable state regulations.

~~Civil Rights~~OBEO also ~~sets~~ approves contract goals, determines goal attainment during the contract award process, and ~~at project completion, and~~ performs external equal employment opportunity compliance reviews of Caltrans’ contractors, including use of DBE and DVBE firms.

Although overall program responsibility rests with ~~Civil Rights~~OBEO, specific construction project responsibility rests with district construction and the Division of Construction. ~~The resident engineer must~~ Be —be aware of the general ~~civil rights~~contract requirements related to use of DBE and DVBE firms and equal employment opportunity, and when a question arises about ~~civil rights~~the requirements or a violation of ~~those~~the requirements has apparently occurred, ~~the resident engineer must~~ immediately notify the district construction office.

If the district needs assistance, the district ~~must contact~~contacts the Division of Construction labor compliance ~~unit~~manager. If a complaint is received from a DBE or DVBE firm regarding treatment on the project, and the firm alleges that the claimed mistreatment is due to its DBE or DVBE status, ~~the resident engineer must~~, promptly notify the district labor compliance officer. If an investigation or other action is appropriate, the district labor compliance officer will make a request to the Division of Construction.

The Division of Construction will arrange for any necessary additional steps, including assistance from other functions, such as the Legal Service Center, ~~Civil Rights~~OBEO, or Audits and Investigations. District construction should only take additional actions

that may be necessary after receiving the Division of Construction's advice and guidance.

DRAFT

### Example 8-3.1 Second Notice, Contractor Has Failed to Respond to Verbal Notice on Nonuse of DVBE

[Contract Identification]  
[Today's Date]  
[Contractor's Superintendent]  
[Prime Contractor]  
[Job Site Address]

Dear [Superintendent]:

On [dDate], the work on Contract Item 73, "Minor Concrete (Curb and Gutter)," apparently was being done by employees of [nName of firm]. Our records indicate that your company stated in its DVBE use plan that this work would be done by [Name-name of DVBE firm]. On [nNotification date], I called your attention to this apparent violation of the contract, yet [nName of firm] has continued to perform work on curbs and gutters. Be advised that, pursuant to the paragraph titled "Subcontracting" in Section 5 of the contract provisions, no payment will be made for the work that was allocated to the listed subcontractor, but performed by [nName of firm].

To avoid the possibility of further consequences for violating the provisions of the contract, we suggest that you either comply with your company's original DVBE use plan or submit a request in writing to make a change. Any request for change must detail your company's reasons for that change, and those reasons must be one of those allowable under the contract provisions. If your request to remove the originally listed subcontractor is approved, you are further advised that you must either replace the value of work to be done by DVBEs with other DVBEs or small businesses, subject to Caltrans and the Department of General Services approval, ~~or prove that you have made a good-faith effort to do so to meet the contract goal.~~ This process can be fairly lengthy, and we urge you to immediately take such steps as are necessary. You are cautioned that we will be unable to authorize either increased costs or time due to your failure to comply with your original contractual commitment.

We are sending copies of this letter to your company's home office and to Caltrans headquarters office in Sacramento. Please contact me if I can assist you in your efforts to fulfill your contract.

Sincerely,

Resident Engineer  
cc: Prime Contractor, Home Office  
HQ Construction Program  
District Construction Office  
RE File

- Note 1: The above letter concerns the least complicated situations in which the prime contractor is doing work planned to be sublet to a DVBE. If a second subcontractor is involved, other contract specifications are probably being violated; for instance, the following:
- *Standard Specifications*, Section 8-1.01 "Subcontracting"—Lack of prior notice of subcontract (if state funded).
  - "Sections 4100–4114, "Subletting and Subcontracting Fair Practices Act," of the Public Contract Code ~~"Subletting and Subcontracting Fair Practices Act"~~—Substitutions for listed subcontractors without the engineer's approval will result in a penalty of up to ~~ten~~ 10 percent of the contract item amount.
- Note 2: When subcontractor approval or notice requirements are involved, the letter to the prime contractor should refer to ~~"subcontracting and DVBE provisions;"~~ rather than merely ~~"DVBE provisions;"~~ When the subcontractor listing law is involved, the letter must clearly address both the ~~"Subletting and Subcontracting Fair Practices Act,"~~ and DVBE violations.