



Construction Policy Bulletin

CPB 13-3 Disabled Veteran Business Enterprise Substitution and Reporting

References:	Public Contract Code	Section 10115
	Military and Veterans Code	Sections 999 (b)(5)(B), 999.5 (d), 999.5 (e)
	California Code of Regulations	Title 2, Section 1896.71 Title 2, Section 1896.73
	Construction Policy Bulletin	CPB 07-2, Disabled Veteran Business Enterprise Substitution
	<i>Standard Specifications</i>	5-1.13C Disabled Veteran Business Enterprises
	<i>Construction Manual</i>	3-507C (3) Hearing Process for Substitutions 3-907A Payment Before Final Estimate

Effective Date: November 22, 2013

Approved:

A handwritten signature in black ink that reads 'Mark Leja'.

MARK LEJA, Chief
Division of Construction

Approval Date: November 21, 2013

Background

The Department of Transportation (Caltrans) encourages disabled veteran business enterprise (DVBE) participation in its transportation projects. Consistent with Public Contract Code, Section 10115, Caltrans strives to maintain a statewide overall achievement of 3 percent DVBE participation in contracts. To encourage bidders to maximize DVBE participation, Caltrans uses bidder incentives and contract percentage requirements of 3 or 5 percent.

In July 2009, the Military and Veterans Code, Section 999.5, was amended to include a requirement for contractors to certify DVBE participation on contracts at completion. The amendment also included a requirement for contractors to replace a listed DVBE only with another DVBE subject to Department of General Services (DGS) approval, effective January 1, 2010. In 2013, the Military and Veterans Code, Section 999 (b)(5)(B), was amended to include additional requirements for determining if a DVBE is performing a commercially useful function. Specifically, a firm must be responsible for determining quality and quantity; ordering; installing if applicable; and making payment for products, inventories, materials, and supplies required for the DVBE commitment. On April 1, 2013, the California Code of Regulations was amended to address statute changes from 2010 and 2013, and includes new procedural requirements for substitution of a DVBE firm listed for contract participation.

This Construction Policy Bulletin (CPB) aligns construction policy and procedures with the 2009 through 2013 changes in the statutes and regulations.

Existing Procedure

After contract award, the resident engineer ensures that the prime contractor uses the DVBEs listed at the time of bid. If a prime contractor requests substitution of a listed DVBE, the resident engineer follows the substitution process provided in CPB 07-2, “Disabled Veteran Business Enterprise Substitution.” The resident engineer may approve the DVBE substitution if the request is for one of the seven reasons listed in CPB 07-2.

For contracts advertised prior to July 28, 2009, Form CEM 2402(S), “Final-Report—Utilization of Disabled Veteran Business Enterprises (DVBE) State Funded Projects Only,” is not required at project completion.

New Procedure

Substitution Process

For state-funded 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 state-funded 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 DGS before allowing a contractor to proceed with the substitution.

The resident engineer reviews contractor requests for substitution of a listed DVBE firm 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 in the California Code of Regulations, Section 1896.73 and providing copies of the following:

- 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.

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

For contracts advertised prior to April 1, 2013, the resident engineer 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.

If the listed DVBE provides a written objection to a contractor's substitution request, within 5 working days of receipt of the objection, the district sets a date for a hearing and sends a notice to the contractor and DVBE of the date and location. The hearing is conducted 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 the substitution may occur, the resident engineer completes Form CEM-2405, "Disabled Veteran Business Enterprise (DVBE) — Substitution Request to the Department of General Services (DGS)," and sends it to the Division of Construction, attention labor compliance program manager, for forwarding to DGS. A copy must be sent 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 will review and sign the DVBE substitution form and forward it to DGS for final review and approval or denial. DGS will respond to the request within 3 business days. The Division of Construction will notify the resident engineer of DGS' final decision upon receipt.

The resident engineer provides 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, the resident engineer ensures the prime contractor completes and submits an updated Form CEM-1201, "Subcontracting Request." If the substitution is denied by DGS, the resident engineer must not allow substitution of the DVBE originally listed. The resident engineer must 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, the resident engineer withholds 10 percent of the dollar value of the original listed DVBE participation.

Final Utilization Report

For state-funded contracts advertised on or after July 28, 2009, the resident engineer ensures that the prime contractor submits a completed Form CEM-2402(S) when the project is accepted. If the prime contractor fails to submit the completed form, an "Other Outstanding Document" withhold applies at the time of the payment after acceptance. For additional information on this type of withhold, refer to Section 3-907A, "Payment Before Final Estimate," of the *Construction Manual*.

If you have questions about the substitution process, please contact Angela Shell, Division of Construction, at angela_shell@dot.ca.gov or (916) 654-3501.

- Attachments:
1. Form CEM-2402(S), "Final Report—Utilization of Disabled Veteran Business Enterprises (DVBE) State Funded Projects Only"
 2. Form CEM-2405, "Disabled Veteran Business Enterprise (DVBE) — Substitution Request to the Department of General Services (DGS)"