

## **CALIFORNIA DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) PROGRAM REQUIREMENTS – FOR NON-IT SERVICES ONLY**

(Revised December 2021)

Please read the requirements and instructions carefully before you begin. These instructions contain information about the DVBE program requirements, bidder responsibilities, and the DVBE Bid Incentive. Bidders are responsible for thorough review and compliance with these instructions.

### **AUTHORITY**

The Disabled Veteran Business Enterprise (DVBE) Participation Goal Program for State contracts is established in Public Contract Code (PCC), §10115 et seq., Military and Veterans Code (MVC), § 999 et seq., Government Code (GC) § 14841, and California Code of Regulations (CCR), Title 2, §1896.61 et seq.

### **DVBE PARTICIPATION**

The minimum DVBE participation percentage (goal) is 3% for this solicitation unless another percentage is specified in the solicitation.

### **DVBE INCENTIVE**

A DVBE incentive will be given to bidders who provide DVBE participation, unless stated elsewhere in the solicitation that the DVBE incentive has been waived.

### **INTRODUCTION**

The bidder must complete the identified form(s) and fully document that the mandatory minimum percent of DVBE participation will be met in order to comply with this solicitation's DVBE program requirements or the bid may be considered non-responsive.

Information submitted by the bidder to comply with this solicitation's DVBE requirements will be verified by the State. If evidence of an alleged violation is found during the verification process, the State shall initiate an investigation, in accordance with the requirements of the PCC §10115, et seq., and MVC §999 et seq., and follow the investigatory procedures required by the 2 CCR §1896.91. Contractors found to be in violation of these provisions may be subject to suspension from doing business with the State of California, contract termination, civil penalties and loss of State certifications.

Only State of California, Office of Small Business and DVBE Services (OSDS), certified DVBEs (hereafter called "DVBE") who will perform a commercially useful function (CUF) shall be used to satisfy the DVBE requirements. The term "DVBE contractor, subcontractor or supplier" means any person or entity that satisfies the ownership (or management) and control requirements of 2 CCR §1896.81, is certified in accordance with 2 CCR §1896.84, and provides services or goods that contribute to the fulfillment of the contract requirements by performing a commercially useful function. Bidders must verify each DVBE subcontractor's certification with OSDS to ensure DVBE participation eligibility prior to submitting bids.

## **COMMERCIALLY USEFUL FUNCTION**

As defined in MVC § 999 (b)(5)(B)(i) I through V, a person or an entity is deemed to perform a "commercially useful function" if a person or entity does all of the following:

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

Pursuant to MVC § 999 (b)(5)(B)(ii), a contractor, subcontractor, or supplier will not be considered to perform a "commercially useful function" if the contractor's, subcontractor's, or supplier's role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of disabled veteran business enterprise participation.

## **DVBE PROGRAM REQUIREMENTS**

To meet the DVBE program requirements, bidders must complete and fully document compliance with the following:

### **A. DVBE Participation Commitment**

Bidders must commit to meet or exceed the DVBE participation requirement in this solicitation by either Method A1 (bidder is a California certified DVBE) or A2 (bidder is not a California certified DVBE). Bidders must document DVBE participation commitment by completing and submitting all forms and documentation necessary to support meeting CUF. Forms include the Bidder Declaration (GSPD-05-105 form) and the DVBE Declaration form (Std. 843) located in the solicitation, the

Commitment Letter as described below, the DVBE Certification, and any other requested documentation. Failure to complete and submit the required form(s) as instructed shall render the bid nonresponsive.

At the State's option prior to award of the contract, a written confirmation from each DVBE subcontractor identified on the Bidder Declaration must be provided. As directed by the State, the written confirmation must be signed by the bidder and/or the DVBE subcontractor(s). The written confirmation may request information that includes but is not limited to the DVBE scope of work, work to be performed by the DVBE, term of intended subcontract with the DVBE, anticipated dates the DVBE will perform required work, and conditions of payment. If further verification is necessary, the State will obtain additional information to verify compliance with the above requirements.

**B. Method A1. Certified DVBE Bidder:**

- i. Commit to perform the participation goal percentage, a minimum of three percent of the contract bid amount with its own resources or in combination with another DVBE(s).
- ii. Document DVBE participation on the Bidder Declaration GSPD-05-105 form. The GSPD-05-105 form must be completed in accordance with the instructions provided on the form. When completing the form, bidders must identify all subcontractors proposed for participation in the contract. Bidders must identify the percentage figure (must be a total of three percent or more) representing the percentage of participation for each subcontractor, including the DVBE subcontractor, rather than an actual dollar figure. No actual dollar figures should appear on the form.
- iii. Submit a written Commitment Letter from each DVBE subcontractor identified on the Bidder Declaration form signed by an official representative of each subcontractor or independent consultant, acknowledging their intended participation/availability and confirmation that they have been made aware of the terms and conditions of the proposed contract. No cost should be included in the commitment letter. Each letter must include the solicitation number and be signed and dated with an original signature included in the original Technical Proposal and a copy of the letter included with each copy of the Technical Proposal. Failure to submit signed confirmations with the bid may render the bid non-responsive. If further verification is necessary, the State will obtain additional information to verify compliance with the above requirements.
- iv. Submit a completed Std. 843 DVBE Declaration form for all DVBE participants (prime and subcontractor(s)). The DVBE Declaration form will be used to confirm compliance with DVBE participation requirements. The form must be completed, signed and dated with an original signature on the form.

### **C. Method A2. Non-DVBE Bidder:**

- i. Commit to using DVBE subcontractor(s) to perform the participation goal percentage, a minimum of three percent of the contract bid amount.
- ii. Document DVBE participation on the Bidder Declaration GSPD-05-105 form. The GSPD-05-105 form must be completed in accordance with the instructions provided on the form. When completing the form, bidders must identify all subcontractors proposed for participation in the contract. Bidders must identify the percentage figure (must be a total of three percent or more) representing the percentage of participation for each subcontractor, including the DVBE subcontractor, rather than an actual dollar figure. No actual dollar figures should appear on the form.
- iii. Submit a written Confirmation Letter from each DVBE subcontractor identified on the Bidder Declaration form signed by an official representative of each subcontractor or independent consultant, acknowledging their intended participation/availability and confirmation that they have been made aware of the terms and conditions of the proposed contract. No cost should be included in the commitment letter. Each letter must include the solicitation number and be signed and dated with an original signature included in the original Technical Proposal and a copy of the letter included with each copy of the Technical Proposal. Failure to submit signed confirmations with the bid may render the bid non-responsive. If further verification is necessary, the State will obtain additional information to verify compliance with the above requirements. The State may contact each listed DVBE, by e-mail, mail, fax or telephone, for verification of the bidder's submitted DVBE information. When requested, the document must be submitted to the address or facsimile number specified and within the timeframe identified in the notification.
- iv. Submit a completed Std. 843 DVBE Declaration form for all DVBE participants (prime and subcontractor(s)). The DVBE Declaration form will be used to confirm compliance with DVBE participation requirements. The form must be completed, signed and dated with an original signature on the form.

### **D. Locating DVBE Suppliers**

To search for a California certified DVBE, go to the California Department of General Services, Cal eProcure website at <https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx>. You may also contact the CDE's DVBE Advocate for assistance. The CDE's DVBE Advocate can be found on the California Department of General Services, Office of Small Business & Disabled Veteran Business Enterprise Services website at <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Small-Business-Disabled-Veteran-Business-Enterprise-Advocate-Directory>.

## DVBE BID INCENTIVE

Unless stated elsewhere in the solicitation that the DVBE incentive has been waived, in accordance with Section 999.5(a) of the MVC an incentive will be given to bidders who provide DVBE participation. For evaluation purposes only, the State shall apply an incentive to bids that propose California certified DVBE participation as identified on the Bidder Declaration form (located in the solicitation document) and confirmed by the State. The incentive amount for awards based on low price will vary in conjunction with the percentage of DVBE participation. Unless a table that replaces the one below has been expressly established elsewhere within the solicitation, the following percentages will apply for awards based on low price.

- Confirmed DVBE Participation of: 5% or Over
  - DVBE Incentive: 5%
- Confirmed DVBE Participation of: 4% to 4.99% inclusive
  - DVBE Incentive: 4%
- Confirmed DVBE Participation of: 3% to 3.99 inclusive
  - DVBE Incentive: 3%

As applicable:

- A. Awards based on low price - the net bid price of responsive bids will be reduced (for evaluation purposes only) by the amount of DVBE incentive as applied to the lowest responsive net bid price. If the #1 ranked responsive, responsible bid is a California certified small business, the only bidders eligible for the incentive will be California certified small businesses. The incentive adjustment for awards based on low price cannot exceed 5% or \$100,000, whichever is less, of the #1 ranked net bid price. When used in combination with a preference adjustment, the cumulative adjustment amount cannot exceed \$100,000.
- B. Awards based on highest score - the solicitation shall include an individual requirement that identifies incentive points for DVBE participation.
- C. A DVBE Business Utilization Plan (BUP) does not qualify a firm for a DVBE incentive – Bidders with a BUP, must submit a Bidder Declaration form to confirm the DVBE participation for an element of work on this solicitation in order to claim a DVBE incentive(s).

## DVBE PROGRAM REQUIREMENTS CHECKLIST

- A. Document DVBE participation on the Bidder Declaration form, which can be found here: <https://www.documents.dgs.ca.gov/dgs/fmc/gspd/gspdpd05-105.pdf>. Please read the Bidder Declaration form instructions carefully.

- B. Document DVBE participation on the DVBE Declaration form, which can be found here: [https://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/pd\\_843.pdf](https://www.documents.dgs.ca.gov/dgs/fmc/gsp/pd/pd_843.pdf). Please read the Std. 843 form carefully.
- C. A signed and dated Commitment Letter, from each certified DVBE identified as a subcontractor on the Bidder Declaration form.
- D. No cost information should be included on any DVBE program/incentive form. The inclusion of cost information on the Bidder Declaration form, Std.843 form, and DVBE confirmation letter may disqualify the proposal from consideration.

## **DVBE POST-CONTRACT REQUIREMENTS**

Upon completion of services, the Contractor must provide to the State, the Prime Contractor's Certification – DVBE Subcontractor Report (Std. 817) form. Please read the Std. 817 form carefully. The Std. 817 form can be found here: <https://www.documents.dgs.ca.gov/dgs/fmc/pdf/std817.pdf>. The State will review the form to determine completeness and accuracy. The Contractor must provide any additional report(s) of actual participation by DVBEs (by dollar amount and category) as may be required by the CDE to document compliance.

Upon receipt of the final invoice, the State will withhold \$10,000.00 of the final payment, or the full amount of the final payment if less than \$10,000.00, until the Std. 817 and proof of payment to DVBE(s) has been received by the State.

If the Std. 817 form is late or incomplete, the State will allow the Contractor to cure within 30 days to meet the certification requirements.

If the Contractor does not comply by the given deadline, the withheld amount will be permanently deducted.