

To enrich the lives of California's school children as stewards of the taxpayers' commitment to education.

Disabled Veteran Business Enterprise

Information and forms package for the Lease-Purchase and State Relocatable Classroom Programs—not applicable to the School Facility Program

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Section 1

School District Checklist

The three percent Disabled Veteran Business Enterprise participation goal shall apply to all State Allocation Board funded school district contracts over \$10,000 in the Lease-Purchase Program and certain contracts over \$10,000 in the State Relocatable Classroom Program (architectural, on-site inspections and utility hookups).

This checklist is designed to help you prepare bid/proposals for contracts funded through the Lease-Purchase and State Relocatable Classroom Programs.

- Check our web page at: www.opsc.dgs.ca.gov/dvbe.htm for latest revision of this package.
- Advertise your invitation to bid per appropriate local agency contracting laws and regulations.¹ School district advertisements for bids should include:
 - specific information about the project including location of work and type of trade(s) you are seeking; and
 - that you are seeking DVBE bids; and
 - date the bid is due; and
 - name, address and telephone number of a contact person.
- Include the items listed below in appropriate invitations to bid. For qualification based selections provide the items listed below to the awardee of the contract.
 - SAB DVBE Policy
 - Substitutions
 - Bidder's Most Frequently Asked Questions
 - Role of Construction Management (if applicable)
 - Prime Bidder Certification form
 - Good Faith Effort Worksheet form
- Give a prebidder workshop to provide information to assist potential bidders in compliance with DVBE requirements.
- If this is a bid—review each bid for responsiveness to the DVBE requirements after the bid opening.
- If this is a proposal—review the awardee's Prime Bidder Certification and Good Faith Effort Worksheet (if applicable) for responsiveness to the DVBE requirements before the contract is signed.

¹ Advertising sources are included in the "State Contracting Resource Packet" available through:

Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS)

Receptionist: 916.375.4940

24-hour Electronic Service: 916.322.5060

Internet Address: <http://www.pd.dgs.ca.gov/smbus>

Note: OSDS is a resource for identifying certified DVBEs and advertising sources, however, the DVBE program they administer applies to contracts with State entities, not contracts awarded by school districts.

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Section 2

State Allocation Board DVBE Policy

Adopted August 26, 1992

Definitions

The term “Disabled Veteran Business Enterprise” (DVBE) means a business concern that is certified as a DVBE by the Office of Small Business and Disabled Veteran Business Enterprise Services.

The term “contract” means any agreement awarded by a school district in which all or part of the funding is provided by the State Allocation Board (SAB) under either the Lease-Purchase or State Relocatable Classroom Programs.

The term “bidder” means any person or persons, firm, partnership, corporation or combination thereof who makes an offer, competitive or noncompetitive, with the intent of forming a contract with one or more school districts on a SAB funded project.

Disabled Veterans Business Enterprise Goals

In addition to the school districts contracting requirements, potential contractors seeking to enter into contracts with school districts on a SAB funded project under the Lease-Purchase and State Relocatable Classroom Program for labor, services, materials, supplies, equipment, construction, alteration, repair or improvement shall be required to meet a three percent participation goal for certified DVBEs or demonstrate that a good faith effort was made to meet the goal by submitting documentation of all actions to comply with California Code of Regulations, Title 2, Division 2, Chapter 3, Subchapter 10.5, Section 1896.63.

In order for any sole proprietorship, partnership, corporation or other enterprises to obtain certification or to be counted toward meeting the DVBE contract goals, such business concern must possess current and valid certification as a DVBE through the Office of Small Business and Disabled Veteran Business Enterprise Services.

For contracts awarded by competitive bid, a bidder must demonstrate fulfillment of this requirement at or prior to the time of bid opening in order to qualify as a responsive bidder. For contracts not awarded by competitive bid, a potential contractor must demonstrate fulfillment of this requirement prior to entering into the contract.

The DVBE participation goal shall apply to all SAB funded school district contracts over \$10,000 in the Lease-Purchase and certain contracts over \$10,000 in the State Relocatable Classroom Program (architectural, on-site inspections and utility hookups).

Any bidder meeting the three percent participation goal for DVBEs is eligible for award of a school district contract. If a bidder is unable to meet the three percent participation goal, the bidder shall demonstrate a good faith effort by submitting documentation of all the following actions:

- » Contact was made with the school district to identify DVBEs;
- » Contact was made with other State and federal agencies and with local DVBE organizations to identify DVBEs;

- » Advertising was published in trade papers and papers focusing on DVBEs, unless time limits imposed by the awarding department do not permit that advertising;
- » Invitations to bid were submitted to potential DVBE contractors; available DVBEs were considered.

The school district shall evaluate the effort made by the bidder to seek out and consider DVBEs as potential subcontractors, and/or material or equipment suppliers. In evaluating such effort, the school district shall consider documentation of the actions specified above. Based on this evaluation, the school district may make a finding that the three percent DVBE participation goal or the good faith effort requirement has been met. The school district finding in this regard is subject to audit by OPSC. A bidder is eligible for award of a school district contract upon a finding by the school district that a three percent DVBE participation goal or good faith effort to meet the participation goal has been achieved.

If a bidder fails to meet either the goal or a good faith effort to meet the three percent goal, such bidder shall be deemed not to be a responsive bidder for purposes of the school districts' evaluation of an award of contract and is thus ineligible for an award.

Section 3

School Districts Most Frequently Asked Questions

Q. What Programs administered by the State Allocation Board (SAB) must comply with the SAB Disabled Veteran Business Enterprise (DVBE) policy?

All contracts over \$10,000 in the Lease-Purchase Program, and certain contracts over \$10,000 in the State Relocatable Classroom Program (architectural, on-site inspections and utility hookups).

Q. Is there a minimum number of days prior to the due date for bids that school districts are required to place their advertisements?

In accordance with Public Contract Code Section 10115.2(b)(3) and implementing regulations, the SAB requires school districts to advertise at least 14 calendar days prior to the due date for bids.

Q. Must a Disabled Veteran Business Enterprise be certified in order to participate in a contract?

Disabled Veteran Business Enterprises must be certified by the Office of Small Business and Disabled Veteran Business Enterprise Services. Their telephone number is 916.375.4940 or 916.322.5060. The Internet address is: <http://www.pd.dgs.ca.gov/smbus>.

Q. My school district is in the process of selecting an architect. Are architectural and other professional services such as construction managers, engineers, environmental and land surveyors, subject to Disabled Veteran Business Enterprise requirements?

Yes, although these contracts are not competitively bid, they are still subject to Disabled Veteran Business Enterprises policy and must demonstrate fulfillment of the requirements prior to entering into the contract.

Q. May the school district open bids and provide bidders a grace period to submit appropriate DVBE documents?

No, however, bids may be received and held unopened and bidders may be given additional time to submit their DVBE documents if approved by the school district legal counsel and specified in the invitations to bid.

Q. May the school district require local Minority and Women Business Enterprise requirements/ programs on SAB funded projects?

Yes, however, if the district rejects the lower bidder because of noncompliance with the local M/WBE requirements the district will be responsible for the increase in cost.

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Section 4

Substitutions

If awarded the contract(s), the successful bidder must use the DVBE subcontractor and/or supplier proposed in the final bid unless the contractor requested a substitution from the school district prior to the execution of the contract and the school district has approved such substitution. At a minimum, the request must include:

1. A written explanation of the reason for the substitution,
2. The identity of the person or firm substituted, and
3. Satisfactory evidence that the DVBE contract participation certified in the original bid will still be met after the substitution.

The school district's approval or disapproval of the substitution is not to be construed as an excuse for non-compliance with any other provision of law including, but not limited to, the Subletting and Subcontracting Fair Practices Act or any other contract requirements relating to substitution of subcontractors.

Failure to adhere to at least the DVBE participation proposed by the successful bidder may be cause for contract termination and recovery of damages under the rights and remedies due the school district/State under the default section of the contract.

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Section 5

Piggybacking on Furniture and Equipment Contracts

Many school districts like to use or “piggyback” pre-existing Furniture and Equipment contracts. This is acceptable in the Office of Public School Construction’s Disabled Veterans Business Enterprise (DVBE) Program when the original contract:

- » Has not passed its expiration date or exceeded its dollar amount (if limited), and
- » Has provisions that allow for piggybacking, and
- » Meets the DVBE requirements (if signed after August 26, 1992).

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Section 6

Role of Construction Management

School Districts

Some school districts choose to contract with a Construction Management firm (CM) to perform certain functions of a project. Subcontractors working on these projects will contract directly with the school district and are treated as prime contractors for purposes of the Disabled Veteran Business Enterprise (DVBE) requirements. Each contract must either meet the participation goals or the good faith effort criteria in order to be eligible for an award. School districts and/or CM firms may assist the bidders that are seeking to comply with the DVBE requirements by developing a list of subcontractors/suppliers that could be solicited for participation. This list of interested subcontractors/suppliers would then be passed on to the plan holding contractors. The CM may assist in the coordination of forms required for submittal by the contractor/subcontractor/supplier.

The CM firm may use Parts I and II of the Prime Bidder Good Faith Effort Worksheet, to develop a list of interested subcontractors/suppliers.

Part I—Contacts

The CM firm may make the required contacts listed in this part to obtain lists of subcontractors/suppliers that may be solicited to participate.

Part II—Advertisements

The CM firm may advertise in trade and focus papers. The advertisement must comply with the requirements listed in this part of the form and include a list of the plan holding contractors that will be using subcontractors/suppliers.

The CM firm must provide all “plan holding” contractors with the documentation of the above process to include on their Prime Bidder Good Faith Effort Worksheet.

Part III—Solicitations

This part must be independently performed by each plan holding contractor. The requirements of this part would include inviting subcontractors/suppliers to bid, listing each DVBE contacted and indicating if the firm will be used or why it is not being used.

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Section 7

Bidders Most Frequently Asked Questions

Q. What programs administered by the State Allocation Board must comply with Disabled Veteran Business Enterprise provisions?

All contracts over \$10,000 in the Lease-Purchase Program, and certain contracts over \$10,000 in the State Relocatable Classroom Program, (architectural, on-site inspections and utility hookups).

Q. Where can I get SAB Disabled Veteran Business Enterprise Forms?

Contact the school district advertising for bid/proposals. They will provide you with the most recent forms.

Q. I am an inspector, I do not subcontract, how do I comply?

You must complete the Prime Bidder Certification Of Disabled Veteran Business Enterprise Participation form, and the Prime Bidder Good Faith Effort Worksheet form. A business enterprise without any opportunity for subcontracting or purchasing of supplies, must provide a narrative on Prime Bidder Good Faith Effort Worksheet form explaining this and be able to demonstrate its inability to subcontract or purchase supplies if an audit occurs.

Q. Must a Disabled Veteran Business Enterprise be certified in order to participate in a contract?

Yes, Disabled Veteran Business Enterprises must be certified by the Office of Small Business and Disabled Veteran Business Enterprise Services.

Q. Is there a minimum number of days prior to bid opening that primary bidders are required to place their advertisements in a publication focused toward DVBE and a trade paper for purposes of the "Good Faith Effort"?

The SAB recommends bidders comply with the Good Faith Effort requirements by advertising at least 14 calendar days prior to bid opening.

Q. What if a bidder does not have 14 days to advertise for the purposes of completing a Good Faith Effort?

You must advertise for as many days as possible before the bid opening date. The only exception to this requirement is if time constraints imposed by the school district prohibit the bidder from advertising. All bidders must be notified of this exception.

Q. Where do I find a list of Disabled Veteran Business Enterprises and list of advertising sources?

The Office of Small Business and Disabled Veteran Business Enterprise Services is located on the Internet and publishes a list of certified Disabled Veteran Business Enterprises and the State Contracting Resources Packet. Their telephone number is 916.375.4940 or 916.322.5060. The Internet address is: <http://www.pd.dgs.ca.gov/smbus>.

Q. I am a distributor or sales representative of XYZ. I pick up the telephone and place the order. There isn't any installation required or the installation is completed by factory trained personnel. The delivery is arranged by the manufacturer. How do I comply with the Disabled Veteran Business Enterprise requirements?

Transfer the burden of compliance to the manufacturer. Ask your manufacturer:

1. What opportunities do you have to subcontract (delivery, bookkeeping, etc.)?
2. What components of the product do you purchase (nuts, bolts, plastic, wood, cardboard boxes, pallets, etc.)?
3. Is equipment purchased to produce the product (safety glasses, hammer, nail gun, etc.)?
4. Are any of the items identified in questions 1 through 3 currently being provided by DVBEs? If yes, prorate the amount of their participation in the product(s) to be bid and include a copy of their DVBE letter from OSDC.
5. Use the Prime Bidder's Good Faith Effort Worksheet to increase your manufacturer's DVBE participation as follows:

Part I—Contacts

Make a contact in each of the three categories. Request DVBE contacts in the subcontracting or purchasing opportunities you have identified (see questions 1 through 3 above). If you have an out-of-state manufacturer ask for contacts in your manufacturer's state.

Part II—Advertisements

Place your advertisements and list your manufacturer's subcontracting or purchasing opportunities.

If you have an out-of-state manufacturer you may advertise in their state as long as all of the requirements listed on the Prime Bidder's Good Faith Effort Worksheet are met.

Part III—Solicitations

List DVBE subcontractors and/or suppliers that you or your manufacturer considered for participation in this bid (i.e., those you contacted from the lists provided by the contacts you make in Part I and those who responded to your advertisement in Part II). Indicate if the subcontractor/supplier was selected, a reason if not selected or check "No Response" (if applicable).

Section 8 Forms

- » Prime Bidder Certification of Disabled Veteran
- » Prime Bidder Good Faith Effort Worksheet

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**PRIME BIDDER CERTIFICATION OF DISABLED VETERAN
BUSINESS ENTERPRISE PARTICIPATION**

To be completed by the Prime Bidder.

GENERAL INSTRUCTIONS

All or part of the funding for the proposed work/services/equipment/supplies for which your firm is bidding has been made available by the State Allocation Board (SAB) through the Lease-Purchase Program or the State Relocatable Classroom Program and as a result, the contract award must be made in accordance with the SAB participation requirements for Disabled Veterans Business Enterprises (DVBE). The SAB requires that all contracts over \$10,000 awarded must meet a DVBE participation goal of not less than three percent of the contract amount. *If your firm cannot meet the three percent DVBE participation goal, you must demonstrate a good faith effort to attempt to meet the three percent participation.* The school district issuing this solicitation document, not the SAB/OPSC, is responsible to assure compliance with the DVBE program.

PART I—IDENTIFICATION INFORMATION

| | | |
|------------------|--------|--------------------|
| BIDDER'S NAME | | TELEPHONE |
| BUSINESS ADDRESS | | |
| SCHOOL DISTRICT | COUNTY | APPLICATION NUMBER |

PART II—METHOD OF COMPLIANCE WITH DVBE PARTICIPATION GOALS

Include this form and any other applicable documents listed in this table with your bid/proposal. Read the three columns in the table below as sentences from left to right. Check the appropriate box to indicate your method of committing the contract dollar amount. If no box can be checked, your bid/proposal will be deemed non-responsive and disqualified.

Important Note

Architectural, engineering, environmental, land surveying or construction management firms must indicate their method of compliance by marking the appropriate box A, B, C, or D after selection by the district and before the contract is signed.

| YOUR BUSINESS ENTERPRISE... | AND YOU... | AND YOU... |
|--|---|---|
| A. <input type="checkbox"/> is Disabled Veteran owned and your forces will perform at least three percent of this contract | will include a copy of your DVBE letter from the Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS). | |
| B. <input type="checkbox"/> is Disabled Veteran owned but is unable to perform the three percent of this contract with your forces | will use DVBE subcontractors/suppliers to bring the contract participation to at least three percent | will include a copy of each DVBE letter from OSDS (including yours, if applicable). |
| C. <input type="checkbox"/> is not Disabled Veteran owned | will use DVBE subcontractors/suppliers for at least three percent of this contract | |
| D. <input type="checkbox"/> is unable to meet the required participation goals | will complete a Good Faith Effort to obtain DVBE participation | will include the Prime Bidder's Good Faith Effort Worksheet. |

Note

An Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) letter must be attached for each DVBE participating in the contract. The DVBE letter is obtained from the participating DVBE. If the letter is not provided, the bid may be deemed nonresponsive and may be ineligible for award of the contract.

**PRIME BIDDER CERTIFICATION OF DISABLED VETERAN
BUSINESS ENTERPRISE PARTICIPATION**

PART III—DVBE DOLLAR PARTICIPATION OF BID/PROPOSAL

Architectural, engineering, environmental, land surveying or construction management firms complete this part after selection by the district and before the contract is signed. All others must complete this section and include it with the bid.

Show deductive alternate(s) in parenthesis. For more alternates/base bids, use a separate page to show items.

- A. If your business enterprise is a DVBE, list in the appropriate column the total dollar amount of your bid to be performed by your own participation.
- B. List all your DVBE subcontractors/suppliers. Enter in the appropriate column the dollar amount for each of your subcontractors/suppliers.
- C. Enter the total of Lines A and B for each column.
- D. Enter the dollar amount of the bid/proposal to be performed by non-DVBE firms. Note: This line is the sum of the prime and subcontractor(s) non-DVBE dollar participation.
- E. Enter the sum of the column totals from Line C and Line D. Note: Please be aware that the final determination of DVBE compliance is made based on the contract amount resulting from the district's acceptance or rejection of alternates.

| | Base Bid/Proposal | Alternate No. 1 | Alternate No. 2 | Alternate No. 3 or Base Bid B | Alternate No. 4 or Base Bid C | Alternate No. 5 (Modernation or Reconstruction Only) |
|--|-------------------|-----------------|-----------------|----------------------------------|----------------------------------|--|
| A. Prime Bidder, if DVBE (own participation) | \$ | \$ | \$ | \$ | \$ | \$ |
| B. DVBE Subcontractor or Supplier | | | | | | |
| 1. | | | | | | |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| C. Subtotal (A and B) | | | | | | |
| D. Non-DVBE | | | | | | |
| E. Total Bid | | | | | | |

PART II—ADVERTISEMENTS

You must make at least two (2) advertisements, one (1) in a paper that focuses on DVBE and one (1) in a trade paper. Advertisements must be published at least 14 days prior to bid/proposal opening; if you cannot advertise 14 days prior, advertise as soon as possible and provide an explanation. (Advertisements must be published in time to allow for a reasonable response.) Advertisements must include that your firm is seeking DVBE participation, the project name and location, your firm’s name, your firm’s contact person, and phone number.

Attach copies of advertisements to this form.

| FOCUS/TRADE PAPER NAME | CHECK ONE | | DATE OF ADVERTISEMENT |
|------------------------|-----------|-------|-----------------------|
| | FOCUS | TRADE | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

PART III—DVBE SOLICITATIONS

List DVBE subcontractors/suppliers that were invited to bid. Use the following instructions to complete the remainder of this section (read the three columns as a sentence from left to right). If you need additional space to list DVBE solicitations, please use a separate page and attach to this form.

| IF THE DVBE... | THEN... | AND... |
|---------------------------------|--|--|
| was selected to participate | check "YES" in the "SELECTED" column, include the applicable dollar amount in Part III of the "Prime Bidder Certification of Disabled Veteran" form. | include a copy of their DVBE letter from OSDC. |
| was not selected to participate | check "NO" in the "SELECTED" column | state why in the "REASON NOT SELECTED" column. |
| did not respond to solicitation | check the "NO RESPONSE" column. | |

| DISABLED VETERANS BUSINESS ENTERPRISES CONTACTED | SELECTED | | REASON NOT SELECTED THIS SECTION MUST BE COMPLETED | NO |
|--|----------|----|---|----|
| | YES | NO | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |

Important Note

Please be aware that certification of the “Good Faith Effort” may only be made if you fully complete Parts I, II, and III on both sides of this form. A copy of this form must be retained by you and may be subject to a future audit.

CERTIFICATION

I, _____ certify that I am the bidder’s Chief Executive Officer and that I have made a diligent effort to ascertain the facts with regard to the representations made herein. In making this certification, I am aware of Section 12650 et seq. of the Government Code providing for the imposition of treble damages for making false claims.

| | |
|--------------------------------------|------|
| SIGNATURE OF CHIEF EXECUTIVE OFFICER | DATE |
|--------------------------------------|------|

