



**Department of General Services
Procurement Division**

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**TO: Department Directors
Procurement and Contracting Officers (PCOs) Purchasing Authority
Contacts (PACs)
Small Business and Disabled Veteran Business Enterprise Advocates
State Contracting Advisory Network (SCAN)**

**RE: SB 548 – Replacement of Disabled Veteran Business Enterprise
Subcontractors**

This bulletin provides information regarding SB 548, Chapter 595, Statutes of 2009, which became effective on January 1, 2010. This bill pertains to the State's Disabled Veteran Business Enterprise (DVBE) Program and is intended to ensure that contractors do not list DVBE subcontractors for purposes of meeting requirements or receiving an incentive during the bidding phase and then not using the DVBE(s) on the project. This bill modified Military & Veterans Code § 999.5 to include the following:

- (d) Upon completion of an awarded contract for which a commitment to achieve a disabled veteran business enterprise goal was made, an awarding department shall require the prime contractor that entered into a subcontract with a disabled veteran business enterprise to certify to the awarding department all of the following:
- (1) The total amount the prime contractor received under the contract.
 - (2) The name and address of the disabled veteran business enterprise that participated in the performance of the contract.
 - (3) The amount each disabled veteran business enterprise received from the prime contractor.
 - (4) That all payments under the contract have been made to the disabled veteran business enterprise. An awarding department shall keep that certification on file. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation in the minimum amount of two thousand five hundred dollars (\$2,500) and the

maximum amount of twenty-five thousand dollars (\$25,000). An action for a civil penalty under this subdivision may be brought by any public prosecutor in the name of the people of the State of California and the penalty imposed shall be enforceable as a civil judgment, and

(e) A prime contractor may, subject to the approval of the Department of General Services, replace a disabled veteran business enterprise identified by the prime contractor in its bid or offer, pursuant to subdivision (a) of Section 999.10, with another disabled veteran business enterprise.

The Department of General Services (DGS) is looking at the feasibility of modifying the General Conditions and the General Provisions to include the reporting requirement into contracts. Until such time that these terms are modified the following, or similar, language is to be included into solicitations issued on or after January 1, 2010, and resulting contract documents.

If for this agreement contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then contractor must within 60 days of receiving final payment under this agreement (or within such other time period as may be specified elsewhere in this agreement) certify in a report to the awarding department: (1) the total amount the prime contractor received under the contract; (2) the name and address of the DVBE(s) that participated in the performance of the contract; (3) the amount each DVBE received from the prime contractor; (4) that all payments under the contract have been made to the DVBE(s); and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Military & Veterans Code (M&VC) § 999.5(d))

After award of a contract, the successful bidder/contractor must use the DVBE subcontractor(s) and/or supplier(s) proposed in their bid or offer to the State unless a substitution is requested and is approved by the awarding department and the DGS. The California Code of Regulations (CCR), Title II section 1896.64(c) and Public Contract Code § 4107 (for Public Works) provide the current requirements for awarding departments to approve the substitution of a DVBE subcontractor. Departments shall follow the processes set forth in 2 CCR § 1894.64(c) and PCC § 4107 when a prime contractor requests the substitution of a DVBE subcontractor with the added provisions that: 1) only another DVBE subcontractor shall be considered to replace a DVBE subcontractor, and 2) the awarding department shall obtain final approval to replace a DVBE subcontractor from the DGS.

As an added step to ensure that prime contractors honor their commitments to use DVBE subcontractors and meet the commitment levels identified in bids, departments are to include language in solicitations and contracts that highlight legal requirements. Effective for solicitations issued on or after January 1, 2010,

the following suggested or similar language is to be incorporated into solicitations and resulting contracts:

Contractor understands and agrees that should award of this contract be based in part on their commitment to use the Disabled Veteran Business Enterprise (DVBE) subcontractor(s) identified in their bid or offer, per Military and Veterans Code 999.5 (e), a DVBE subcontractor may only be replaced by another DVBE subcontractor and must be approved by the Department of General Services (DGS). Changes to the scope of work that impact the DVBE subcontractor(s) identified in the bid or offer and approved DVBE substitutions will be documented by contract amendment.

Failure of Contractor to seek substitution and adhere to the DVBE participation level identified in the bid or offer may be cause for contract termination, recovery of damages under rights and remedies due to the State, and penalties as outlined in M&VC § 999.9; Public Contract Code (PCC) § 10115.10, or PCC § 4110 (applies to public works only).

Requests to replace a DVBE subcontractor must be amply documented to show that the replacement meets the criteria as specified in the CCR or the PCC. Documentation may include, but is not limited to the request, confirmation of receipt of the request, the subcontractor's objection and request for hearing and the final Statement of Decision. Requests and resulting amendments generated by the DVBE subcontractor substitution should be timely so as not to unreasonably delay the contractor's performance of the contract, resulting in potential claims against the awarding department for delay damages.

Requests are to be sent electronically to osdshelp@dgs.ca.gov. Click on the following link to access the "DVBE Substitution" Form and Instructions: [DVBE Substitution Form and Instructions](#).

For general assistance, email osdshelp@dgs.ca.gov or call (916) 375-4940.

For questions regarding purchasing authority requirements, please contact DGS/PD's Purchasing Authority Management Section at: pams@dgs.ca.gov.

For questions about the State Contracting Manual, Vol. 1, please contact the DGS Office of Legal Services attorney assigned to your department.

For questions about the State Contracting Manual, Vol. 2 and Vol. 3, please contact the DGS/PD's Policy and Procedures Office at: ppo@dgs.ca.gov.