

## **DVBE RULES AND PROCEDURES**

### **1. Terms**

In these rules and procedures:

- A. “Annual Goal” refers to the goal that 3% of the JBE’s total annual contract value be expended on goods or services provided by DVBEs.
- B. “Bid” means a response to a competitive solicitation issued by the JBE, regardless of the solicitation document used by the JBE (e.g., IFB, or RFP).
- C. “Bidder” means a person or entity that submits a response to a competitive solicitation issued by the JBE, regardless of the solicitation document used by the JBE (e.g., IFB, or RFP).
- D. “Bidder Declaration” means the declaration completed by Bidder in order to claim the DVBE incentive.
- E. “BUP” refers to a business utilization plan.
- F. “DGS” refers to the California Department of General Services.
- G. “DVBE” refers to a DGS-certified disabled veteran business enterprise.
- H. “DVBE Declaration” means the declaration completed by each DVBE associated with a bid.
- I. “Incentive Goal” refers to the percentage of the contract goods and/or services that must be provided by a DVBE in order for a Bidder to receive the DVBE incentive.

### **2. Affected solicitations, waiver**

The JBE will offer a DVBE incentive for competitive solicitations over \$5,000, unless the DVBE incentive is waived. When the DVBE incentive is waived, the JBE will include a completed DVBE waiver form in the procurement file.

The JBE may waive the DVBE incentive in any solicitation. Without limiting the foregoing, the JBE may waive DVBE incentive in solicitations in which (i) few or no DVBE subcontracting opportunities exist, (ii) subcontracting a portion of the work is not normal for the industry, and (iii) the work is so specialized that there are few or no DVBEs that can perform the work.

### **3. Incentive Goal**

For solicitations in which the DVBE incentive is offered, the Incentive Goal is 3%.<sup>1</sup> In other words, at least 3% of the contract goods and/or services must be provided by a DVBE in order for a Bidder to receive the DVBE incentive.

### **4. Determining if a Bidder is entitled to the DVBE incentive**

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<sup>1</sup> The JBE may, for a specific solicitation, adopt (i) a lower Incentive Goal, (ii) a higher Incentive Goal, or (iii) a scaled Incentive Goal where bidders obtaining higher levels of DVBE participation qualify for greater incentives. If the JBE adopts any of these for a specific solicitation, it will disclose details in the solicitation document.

Bidder must completely and accurately complete the Bidder Declaration. The information contained in the Bidder Declaration is used to determine whether a Bidder qualifies for the DVBE incentive. If a bid is disqualified on other grounds (e.g. it was late), there is no need to determine whether that Bidder would otherwise be entitled to the DVBE incentive.

A Bidder may qualify for the DVBE incentive in **three ways**. To qualify for the DVBE incentive, the Bidder must meet the requirements in Section 4.A, Section 4.B, or Section 4.C below.

**A. Bidder is a DVBE**

The first way for a Bidder to qualify for the DVBE incentive is if Bidder itself is a DVBE. To qualify for the DVBE incentive in this manner:

- i. Bidder must complete both a Bidder Declaration and a DVBE Declaration.
- ii. Bidder's DVBE certification must be active as of the date that the bids are due.
- iii. Bidder must provide a copy of its DVBE certification issued by DGS.
- iv. Bidder must certify that it is not a broker or an agent by checking the first box in Section 2 of the DVBE Declaration. If this box is not checked, the Bidder is not eligible to receive the DVBE incentive, and the amount spent on the contract does not count toward the Annual Goal.
- v. If Bidder will use subcontractors, the portion of the contract to be performed by Bidder itself must be at least 3%<sup>2</sup> of the contract value and must constitute a commercially useful function. (See Section 4.C.v below for more information about commercially useful functions.)
- vi. If Bidder will provide equipment rental, the Bidder must check both boxes in Section 3 of the DVBE Declaration. If either box is not checked, the dollar amount of the contract related to equipment rental (1) is excluded from the Incentive Goal when determining if Bidder is qualified for the DVBE incentive, and (2) does not count toward the Annual Goal.

**B. Business Utilization Plan**

The second way for a Bidder to qualify for the DVBE incentive is if Bidder has an approved business utilization plan (BUP) on file with DGS. To qualify for the DVBE incentive in this manner:

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<sup>2</sup> Although uncommon, a Bidder that is a DVBE could subcontract to other DVBEs. If Bidder subcontracts to DVBE subcontractors, (i) Bidder in combination with the DVBE subcontractors must meet the Incentive Goal, (ii) Bidder must meet the requirements in this Section 4.A, and (iii) Bidder and the DVBE subcontractors must meet the requirements in Section 4.C. The 3% amount assumes that the Incentive Goal for the solicitation is the standard 3%. If the JBE has adopted a higher or lower Incentive Goal for a specific solicitation, this percentage must be adjusted accordingly.

- i. The solicitation must be for non-IT goods or IT goods or services. A BUP may not be used to qualify for the DVBE incentive in a non-IT services solicitation.
- ii. Bidder's BUP must have been approved by DGS prior to the date that the bids are due.
- iii. Bidder's BUP must not be expired as of the date that the bids are due.
- iv. Bidder must provide a copy of its "Notice of Approved DVBE Business Utilization Plan" issued by DGS.

**C. Bidder will use DVBE subcontractors**

The third way for a Bidder to qualify for the DVBE incentive is using DVBE subcontractor(s). To qualify for the DVBE incentive in this manner:

- i. Bidder must identify all DVBE subcontractors on the Bidder Declaration.
- ii. The DVBE subcontractor's DVBE certification must be active as of the date that the bids are due.
- iii. Bidder must provide a copy of each DVBE subcontractor's DVBE certification issued by DGS.
- iv. Each DVBE subcontractor must complete a DVBE Declaration. Bidder must submit each completed DVBE Declaration along with its Bidder Declaration.
- v. The Bidder must submit written confirmation from each DVBE subcontractor that it will provide the goods and/or services if Bidder is awarded the contract.
- vi. The DVBE subcontractor must certify that it is not a broker or an agent by checking the first box in Section 2 of the DVBE Declaration. If this box is not checked, the value of the subcontract (1) is excluded from the Incentive Goal when determining if Bidder is qualified for the DVBE incentive, and (2) does not count toward the Annual Goal.
- vii. The DVBE subcontractor must be performing a commercially useful function. In other words, the DVBE subcontractor cannot be a mere extra participant through which funds are passed in order to obtain the appearance of DVBE participation. See items C.9 and C.10 of the Bidder Declaration when determining whether the DVBE subcontractor is performing a commercially useful function. If the DVBE subcontractor is not performing a commercially useful function, the dollar amount of the subcontract (1) is excluded from the Incentive Goal when determining if Bidder is qualified for the DVBE incentive, and (2) does not count toward the Annual Goal. MVC 999 states that an entity performs a **"commercially useful function"** if the entity does all of the following: (a) is responsible for the execution of a distinct element of the work of the contract; (b) carries out the obligation by actually performing, managing, or supervising the work involved; (c) performs work that is normal for its business services and functions; (d) 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; and (e) is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices.
- viii. The percentage of the total bid price for the goods and/or services to be provided by DVBE subcontractor(s) is at least 3%.<sup>3</sup> See items C.11 of the Bidder Declaration when determining whether the Bidder has met this threshold.
  - ix. If a DVBE subcontractor will provide equipment rental, the DVBE subcontractor must check both boxes in Section 3 of the DVBE Declaration. If either box is not checked, the dollar amount of the subcontract related to equipment rental (1) is excluded from the Incentive Goal when determining if Bidder is qualified for the DVBE incentive, and (2) does not count toward the Annual Goal.

Note: After the contract is completed, the Bidder must complete and submit to the JBE a post-contract certification form to verify that each DVBE subcontract was completed as promised. This certification form is required only when DVBE subcontractors are used.

## 5. DVBE incentive

### A. Incentive amount

For solicitations that offer a DVBE incentive, the amount of the incentive is 3%.<sup>4</sup> The way the DVBE incentive is applied depends on whether the contract will be awarded to the lowest responsible bidder or to the highest scoring bid.

### B. DVBE incentive in lowest responsible bidder solicitations

For solicitations awarded to the lowest responsible bidder (e.g. IFBs), the Bidder's bid price is reduced by an amount equal to 3% of the lowest responsible bid.<sup>5</sup> This reduction is for evaluation purposes only; the amount to be paid to Bidder if it wins the contract is not reduced by this amount.

*Example 1: The JBE issues a lowest responsible bidder solicitation and receives three responsive bids. The first bid is from AAA Corp, a non-DVBE that bids \$98,000. The second bid is from BBB Corp, a DVBE that bids \$100,000. The third bid is from CCC Corp, a DVBE that bids \$110,000. The lowest responsible bid is AAA Corp's bid for \$98,000, so the dollar amount of the DVBE incentive is \$2,940 ( $98,000 \times 3\% = 2,940$ ). A*

<sup>3</sup> If Bidder is also a DVBE, the percentage of the total bid price for the goods and/or services to be provided by Bidder and the DVBE subcontractor(s) is at least 3%. See footnote 2 above. If the JBE has adopted a higher or lower Incentive Goal for a specific solicitation, this percentage must be adjusted accordingly.

<sup>4</sup> The JBE may, however, adopt a higher or lower incentive amount for a specific solicitation. If the JBE adopts a higher or lower incentive amount for a specific solicitation, the JBE will disclose this higher or lower amount in the solicitation document.

<sup>5</sup> If the JBE has adopted a higher or lower incentive amount for a specific solicitation, this percentage must be adjusted accordingly.

*bid submitted by a DVBE is reduced by this amount, for purposes of evaluating the bids. The bid from BBB Corp (a DVBE) is reduced by \$2,940 to \$97,060. The bid from CCC Corp (also a DVBE) is reduced by \$2,940 to \$107,060. In this case, the JBE will award the contract to the BBB Corp; the amount of the contract will be \$100,000.*

|  | <b>AAA Corp</b> | <b>BBB Corp</b>        | <b>CCC Corp</b>  |
|--|-----------------|------------------------|------------------|
| <i>DVBE?</i>   | <i>No</i>       | <i>Yes</i>             | <i>Yes</i>       |
| <i>Bid amount</i>  | <i>\$98,000</i> | <i>\$100,000</i>       | <i>\$110,000</i> |
| <i>Dollar amount of DVBE incentive</i>                           |                 | <i>\$2,940</i>         | <i>\$2,940</i>   |
| <i>Adjusted bid amount (for purposes of evaluating the bids)</i> | <i>\$98,000</i> | <b><i>\$97,060</i></b> | <i>\$107,060</i> |

The maximum dollar value of the DVBE incentive in a lowest responsible bidder solicitation is \$100,000. In other words, in very large solicitations the value of the DVBE incentive is capped at \$100,000.

*Example 2: The JBE issues a lowest responsible bidder solicitation and receives three responsive bids. The first bid is from DDD Corp, a DVBE that bids \$4,200,000. The second bid is from EEE Corp, a DVBE that bids \$4,110,000. The third bid is from FFF Corp, a non-DVBE that bids \$4,000,000. The lowest responsible bid is FFF Corp's bid for \$4,000,000, so one might expect that the dollar amount of the DVBE incentive will be \$120,000 ( $4,000,000 \times 3\% = 120,000$ ). However, the maximum dollar value of the DVBE incentive is \$100,000. A bid submitted by a DVBE is reduced by \$100,000, for purposes of evaluating the bids. The bid from DDD Corp (a DVBE) is reduced by \$100,000 to \$4,100,000. The bid from EEE Corp (a DVBE) is reduced by \$100,000 to \$4,010,000. In this case, the JBE will award the contract to FFF Corp; the amount of the contract will be \$4,000,000.*

|  | <b>DDD Corp</b>    | <b>EEE Corp</b>    | <b>FFF Corp</b>           |
|--|--------------------|--------------------|---------------------------|
| <i>DVBE?</i>   | <i>Yes</i>         | <i>Yes</i>         | <i>No</i>                 |
| <i>Bid amount</i>  | <i>\$4,200,000</i> | <i>\$4,110,000</i> | <i>\$4,000,000</i>        |
| <i>Dollar amount of DVBE incentive</i>                           | <i>\$100,000</i>   | <i>\$100,000</i>   |                           |
| <i>Adjusted bid amount (for purposes of evaluating the bids)</i> | <i>\$4,100,000</i> | <i>\$4,010,000</i> | <b><i>\$4,000,000</i></b> |

**C. DVBE incentive in highest scored bid solicitations**

For solicitations awarded to the highest scored bid (e.g. RFPs), the evaluation criteria must account for the DVBE incentive. The DVBE incentive is 3% of the total possible available points. For example, if a solicitation has 100 total possible available points, 3 points would be allocated as the DVBE incentive.

The DVBE incentive is awarded on an “all or nothing” basis. All 3 points are added to the score of any entity that qualifies for the DVBE incentive. None of the 3 points is added to the score of any entity that does not qualify for the DVBE incentive.<sup>6</sup>

*Example 1: The JBE issues a highest scored bid solicitation with the following evaluation criteria:*

| Criterion                              | Possible points |
|--|-----------------|
| Experience on similar assignments      | 12              |
| Cost                                   | 50              |
| Quality of work plan submitted         | 30              |
| Acceptance of the Terms and Conditions | 5               |
| DVBE incentive                         | 3               |

*The JBE receives two responsive bids. The first bid is from a non-DVBE and the second bid is from a DVBE. The JBE scores the bids as follows:*

| Criterion                              | Non-DVBE  | DVBE      |
|--|-----------|-----------|
| Experience on similar assignments      | 12        | 12        |
| Cost                                   | 48        | 47        |
| Quality of work plan submitted         | 29        | 28        |
| Acceptance of the Terms and Conditions | 5         | 5         |
| DVBE incentive                         | 0         | 3         |
| <b>TOTAL</b>                           | <b>94</b> | <b>95</b> |

*The DVBE qualified for the DVBE incentive, and received all three points. The non-DVBE did not qualify for the DVBE incentive, and received none of those three points. The JBE will award the contract to the DVBE, as its bid received the highest score.*

## 6. Suspended or debarred bidders and subcontractors

The JBE will not enter any contract with a Bidder suspended or debarred for violating PCC 10115.10 for the period of the applicable suspension or debarment. The JBE will not award a contract to a Bidder utilizing the services of a subcontractor suspended or debarred for violating PCC 10115.10 for the period of the applicable suspension or debarment. DGS maintains a list of suspended and debarred entities at [www.documents.dgs.ca.gov/pd/smallbus/SuspendList.pdf](http://www.documents.dgs.ca.gov/pd/smallbus/SuspendList.pdf).

## 7. Replacement of DVBE subcontractors

<sup>6</sup> If the number of points is greater or lesser than 3 in a specific solicitation, the number of points in this paragraph must be adjusted accordingly.

With the JBE's prior written approval, a vendor may replace a DVBE subcontractor identified in its bid with another DVBE.

When requesting replacement of a DVBE subcontractor, the vendor must provide to the JBE:

- i. Written explanation of the reason for the requested replacement.
- ii. New DVBE subcontractor name.
- iii. New DVBE subcontractor contact person.
- iv. New DVBE subcontractor address.
- v. New DVBE subcontractor phone number.
- vi. New DVBE subcontractor email.
- vii. New DVBE subcontractor DVBE supplier ID number.
- viii. New DVBE subcontractor DVBE certification active dates (from/to).
- ix. Other information as requested by the JBE.

A JBE may not permit a vendor to use a subcontractor suspended for violating PCC 10115.10 for the period of the applicable suspension. To access a DGS list of suspended Bidders, search on [www.dgs.ca.gov/pd/Programs/OSDS/firmviolations.aspx](http://www.dgs.ca.gov/pd/Programs/OSDS/firmviolations.aspx).

## **8. General**

### **A. Use of existing state resources**

The JBE will use existing state resources related to DVBEs. These resources include the database of certified DVBEs maintained by DGS, currently accessible at [www.bidsync.com/DPXBisCASB](http://www.bidsync.com/DPXBisCASB).

### **B. Monitoring adherence to DVBE goals**

- i. Incentive Goal. If Bidder receives the DVBE incentive by using DVBE subcontractor(s), Bidder must complete and submit to the JBE a post-contract certification form to verify that DVBE subcontracting was completed as promised. The completed post-contract certification forms will be retained in the procurement file.
- ii. Annual Goal. The JBE will track the total value of work awarded or subcontracted to DVBEs each year.