DISABLED VETERANS BUSINESS
DVBE
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Serving California's Disabled Veteran Population

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Subject: Elimination of the Good Faith Effort in Public Contracting Code

Now that the Good Faith Effort (GFE) is gone, what does it mean to Disabled Veteran Business Enterprises (DVBE), primes and the businesses that make their living from the outreach required by the GFE process?

Overview of the DVBE program

When the DVBE program began in 1989 there were very few DVBE available, especially in the construction industry. GFE was a very important process 20 years ago because it made big businesses reach out to try and find DVBE.

With 1100 or so DVBE certified in the state today, the GFE has outlived its usefulness. Regardless of what we are told by large primes, there are many DVBE that provide goods or services in all industries and there are growing businesses that can develop new capabilities fairly quickly.

The basic law for the DVBE program does one thing. It tells the state agencies that at the end of the fiscal year (30 June) the agency should have contracted 3% of its total procurement dollars with DVBE. This can be done directly or via any tier under a prime that uses the DVBE.
This law is referred to as the “program requirement”

At the end of the reporting period, if the agency hasn't met the 3% DVBE goal then it must prepare a plan for how it will improve that % for the next year.

The DVBE Incentive (SB 115)

This incentive was enacted to help agencies meet the legislated 3% DVBE goal. The minimum incentive is 1 % and the maximum is 5% of the lowest responsible and responsive bid. Agencies may also offer an incentive scale under which bidders obtaining higher levels of participation qualify for greater incentive.
Do not confuse the incentive percentages with the DVBE program requirement which has most often been 3%. These are “apples and oranges” numbers.
The incentive percentages are used to develop a price adjustment, for evaluation purposes only, once an apparent lowest bid has been determined. The incentive percentages are taken against the apparent low bid and the final adjustment determines what bidder wins. Generally speaking if you use 0% DVBE participation you get no adjustment on your bid price. If you use maximum DVBE participation you get the maximum adjustment articulated in the particular contract.

It is really pretty simple.
Also remember that the adjustment may be capped, usually at $100,000.

$100,000 may not get you much in a $50 million dollar bid so you may have to target your bids to smaller contracts. Also the agency does not have to cap the incentive adjustment, so we often work with the agencies on large contracts to adjust the cap upward.
And there is nothing that stops you the DVBE from going to the contracting officer and recommending that they increase the cap.
If you are bidding the contract as the prime, you automatically get the full DVBE incentive. You are not required to sub contract to other DVBE.

The DVBE incentive and the small business preferences are applied cumulatively. The small business preference is always capped and the DVBE incentive often is capped also.

<u>What are the ramifications of the elimination of GFE?</u>

First the businesses that have executed GFE for primes over the past years may want to change their business model. They can opt to offer primes a listing of DVBE to help them meet the incentive or the specified % of DVBE goal. The specified goal may be less than or greater than 3% as appropriate for each solicitation. It will be an action that actually provides DVBE to primes rather than just the paperwork.

For the contracting process, careful decision making is now more important to ensure bidders will be responsive to program requirements. Key decisions include:

- When should a solicitation be exempt from DVBE requirement?
- What is the appropriate level of DVBE participation to require?
- How should the DVBE incentive be used to achieve greater DVBE participation?

The new law only impacts solicitations issued on or after July 28, 2009. Buyers must now specify an appropriate goal in their solicitations because if primes don't meet the stated goal then their bid is non-responsive. Clearly we don't want agencies getting all non responsive bids so DVBE may see more solicitations without a program requirement, a goal of less than 3%, or a goal of more than 3%. A DVBE incentive(s) may also be offered in any competitive solicitation whether or not it includes a required DVBE goal. .

This is where the incentive comes into play. Per regulations the incentive must be in all contracts when the solicitation includes a required DVBE goal unless, in very specific cases, a senior member of the agency opts to leave it out. This is only done if that agency has made the 3% DVBE goal (on its total contract dollars) 2 out of the 3 previous years. If the agency opts to leave the DVBE program requirement out of a contract, and this will likely be the case more often now with GFE gone, then the agency can still put the incentive in the contract.
In this case primes can be responsive without DVBE participation but would not get the incentive adjustment if they don't use DVBE.
Note that an argument against the incentive has always been that it costs the state more money but that is not the case if all primes use full DVBE participation. In this

case, which is a “win-win” for all concerned, the adjustment is the same for all bids, the lowest bid still wins, and full DVBE participation is attained.

The elimination of GFE from the contracting process is a huge win for the State of California. The time and money saved will be immense.

DVBE must listen to the needs of primes, especially in the construction industry, must develop services and commodities which meet the needs that the primes articulate, and must be price competitive.

It must be noted that there is some opposition to the elimination of GFE and there may be follow-on proposed “clean up” legislation from other entities, especially in the construction industry with regards to Public Works Contracts in the state.

The Alliance will stay abreast of this action and keep all advised.