	SANTA CRUZ SUPERIOR COURT POLICY FOR DISABLED VETERAN BUSINESS ENTERPRISE (DVBE) INCENTIVES IN CONTRACTING

DVBE RULES AND PROCEDURES

1. Terms

In these rules and procedures:

A. "Annual Goal" refers to the goal that 3% of the Court'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 Court, regardless of the solicitation document used by the Court (e.g., IFB or RFP).
C. "Bidder" means a person or entity that submits a response to a competitive solicitation issued by the Court, regardless of the solicitation document used by the Court (e.g., IFB or RFP).
D. "Bidder Declaration" means the declaration completed by a Bidder seeking to claim the DVBE incentive.
E. "BUP" refers to a business utilization plan.
F. "Court" refers to the Santa Cruz Superior Court.
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 Court will offer a DVBE incentive for competitive solicitations, unless the DVBE incentive is waived. When the DVBE incentive is waived, the Court will include a completed DVBE waiver form in the procurement file.

The Court may waive the DVBE incentive in any solicitation. Without limiting the foregoing, the Court 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, or (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%.[1] 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

Bidder must complete the Bidder Declaration and submit it with its bid. 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, 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 approval letter 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, 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%[2] of the contract value and must constitute a commercially useful function. (See Section 4.C.vii below for more information about commercially useful functions.)

[1] The Court 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 Court adopts any of these for a specific solicitation, it will disclose details in the solicitation document.

[2] Although uncommon, a Bidder that is a DVBE could subcontract to other DVBEs. If Bidder subcontracts to DVBE subcontractors, (a) the combined work performed by Bidder and the DVBE subcontractors must meet the Incentive Goal, (b) Bidder must meet the requirements in Section 4.A.(i)-(iv) and (vi), and (c) 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 Court has adopted a higher or lower Incentive Goal for a specific solicitation, this percentage must be adjusted accordingly.

vi. If Bidder will provide equipment rental, 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:

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 one or more DVBE subcontractors. To qualify for the DVBE incentive in this manner:

i. Bidder must identify all DVBE subcontractors on the Bidder Declaration.
ii. Each 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 approval letter 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. Bidder must submit written confirmation from each DVBE subcontractor that, if Bidder is awarded the contract, the DVBE subcontractor will provide the applicable goods and/or services.
vi. Each 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. Each DVBE subcontractor must perform 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 III.9 and III.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%.[3] See items III.11 of the Bidder Declaration when determining whether Bidder has met this threshold.

ix. If a DVBE subcontractor will provide <u>equipment rental</u>, 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, Bidder must complete and submit to the Court 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%.[4] The way the DVBE incentive is applied depends on whether the contract will be awarded to the <u>lowest responsible bidder</u> or to the <u>highest scored bid</u>.[5]

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[3] 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 Court has adopted a higher or lower Incentive Goal for a specific solicitation, this percentage must be adjusted accordingly.

[4] The Court may, however, adopt a higher or lower incentive amount for a specific solicitation. If the Court adopts a higher or lower incentive amount for a specific solicitation, the Court will disclose this higher or lower amount in the solicitation document.

[5] If a solicitation is for IT goods or services, the application of the DVBE incentive may be affected by the small business preference. For details regarding the interaction between the DVBE incentive and the

B. DVBE incentive in lowest responsible bidder solicitations

For solicitations awarded to the lowest responsible bidder (e.g., IFBs), Bidder's bid price is reduced by an amount equal to 3% of the lowest responsible bid.[6] 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 Court issues a lowest responsible bidder solicitation and receives three responsive bids. The first bid is from AAA Corp (not eligible for the DVBE incentive) for $98,000. The second bid is from BBB Corp (eligible for the DVBE incentive) for $100,000. The third bid is from CCC Corp (eligible for the DVBE incentive) for $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 x 3% = 2,940). Bids submitted by entities eligible for the DVBE incentive are reduced by this amount, for purposes of evaluating the bids. The bid from BBB Corp is reduced by $2,940 to $97,060. The bid from CCC Corp is reduced by $2,940 to $107,060. In this scenario, the Court will award the contract to the BBB Corp; the amount of the contract will be $100,000.

	AAA Corp	***BBB Corp***	***CCC Corp***
Bid amount	*$98,000*	*$100,000*	*$110,000*
Eligible for DVBE incentive?	*No*	*Yes*	*Yes*
Dollar amount of DVBE incentive		*$2,940*	*$2,940*
Adjusted bid amount (for purposes of evaluating the bids)	*$98,000*	***$97,060***	*$107,060*

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 Court issues a lowest responsible bidder solicitation and receives three responsive bids. The first bid is from DDD Corp (eligible for the DVBE incentive) for $4,200,000. The second bid is from EEE Corp (eligible for the DVBE incentive) for $4,110,000. The third bid is from FFF Corp (not eligible for the DVBE incentive) for $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 x 3% = 120,000). However, the maximum dollar value of the DVBE incentive is $100,000. A bid submitted by an entity eligible for the DVBE incentive is reduced by $100,000 for purposes of evaluating the bids. The bid from DDD Corp is reduced by $100,000 to $4,100,000. The bid from EEE Corp is reduced by $100,000 to $4,010,000. In this scenario, the

small business preference, see the Court's Small Business Preference Procedures for the Procurement of Information Technology Goods and Services.

[6] If the Court has adopted a higher or lower incentive amount for a specific solicitation, this percentage must be adjusted accordingly.

Court will award the contract to FFF Corp; the amount of the contract will be $4,000,000.

	DDD Corp	***EEE Corp***	***FFF Corp***
Bid amount	*$4,200,000*	*$4,110,000*	*$4,000,000*
Eligible for DVBE incentive?	*Yes*	*Yes*	*No*
Dollar amount of DVBE incentive	*$100,000*	*$100,000*	
Adjusted bid amount (for purposes of evaluating the bids)	*$4,100,000*	*$4,010,000*	***$4,000,000***

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 an entity that qualifies for the DVBE incentive. None of the 3 points is added to the score of an entity that does not qualify for the DVBE incentive.[7]

Example 3: 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 Court receives two responsive bids, from GGG Corp and HHH Corp. GGG Corp is not a DVBE and makes no commitment to use DVBE subcontractors. HHH Corp is a DVBE. The Court scores the bids as follows:

Criterion	GGG Corp	HHH Corp
Experience on similar assignments	12	12

[7] 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.

Cost	48	47
Quality of work plan submitted	29	28
Acceptance of the Terms and Conditions	5	5
DVBE incentive	0	3
TOTAL	**94**	**95**

HHH Corp qualified for the DVBE incentive and received all three points. GGG Corp did not qualify for the DVBE incentive and received none of those three points. The Court will award the contract to HHH Corp, as its bid received the highest score.

6. Suspended or debarred bidders and subcontractors

The Court 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 Court 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.

7. Replacement of DVBE subcontractors

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

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

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 Court.

The Court 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 https://www.documents.dgs.ca.gov/pd/smallbus/Suspendedlist.pdf.

8. General

A. Use of existing state resources

The Court will use existing state resources related to DVBEs. These resources include the database of certified DVBEs maintained by DGS, currently accessible at https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx.

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 Court 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 Court will track the total value of work awarded or subcontracted to DVBEs each year.