

# Commercially Useful Function (CUF)

*What Small Businesses (SB) and Disabled Veteran Business Enterprises (DVBE) need to know when doing business with California state government*

**DGS**

STATE OF CALIFORNIA  
**OFFICE OF SMALL BUSINESS**  
AND DISABLED VETERAN BUSINESS ENTERPRISE SERVICES

[www.dgs.ca.gov/PD-SB-DVBE-Resources](http://www.dgs.ca.gov/PD-SB-DVBE-Resources) | [OSDSHelp@dgs.ca.gov](mailto:OSDSHelp@dgs.ca.gov)

# Commercially Useful Function (CUF)

## Overview

It is the law.<sup>1</sup> Performing a Commercially Useful Function (CUF) is a critical requirement for all California-certified firms – SB and DVBE – that do business with the state, whether as prime contractors, subcontractors or suppliers of goods/services. CUF requirements are in place to assure that no SB/DVBE is used as a pass-through or an extra participant in a state contract or procurement to create the appearance of SB/DVBE participation in order to meet bid requirements. Compliance with CUF requirements also ensures that SB bid preferences and/or DVBE incentives are applied for work, services and/or goods that are part of the contract.

## What Does it Mean to Perform CUF?

To perform a CUF, an SB and/or DVBE must do all the following in each procurement with the State:

1. Execute a distinct element of the contract work, including supplying of goods/services.
2. Perform, manage, or supervise the work, including supplying of goods/services.
3. Perform work that is normal for the firm's business services and functions.

4. Be 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 paying for the material.
5. Not subcontract a portion of the work greater than expected by industry practices.

## When Must a SB and/or DVBE Perform CUF?

Each certified SB or DVBE must perform a CUF when participating on any state contract as a contractor, subcontractor, or supplier of goods and/or services, regardless of the procurement type or payment method. This means when a quote or a bid is submitted either directly to the state or a prime contractor, the certified SB or DVBE must demonstrate the ability to perform CUF on the specific contract work they are committing to provide.

Once selected to participate on a state contract, either as a prime contractor, or subcontractor, or supplier of good and/or services, the certified SB or DVBE must continue to perform CUF for the duration of their contract work. CUF performance must also be demonstrated during SB/DVBE subcontractor substitution processes, if any.

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<sup>1</sup> Government Code Section 14837 and Military and Veterans Code Section 999

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## *When Must a SB and/or DVBE Perform CUF? - continued*

A SB/DVBE contractor, subcontractor, or supplier will not be considered to perform a CUF if their role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of or SB/DVBE participation. This means another entity must not be allowed to use a certified business to gain SB/DVBE participation credit on a state contract without having the SB or DVBE perform a distinct element of the work on the contract/procurement. In other words, don't simply provide your certification number with the promise of a fee if you are not performing the work on the contract. This is not considered a CUF.

Additionally, being certified as an SB or DVBE by the DGS Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) does not automatically mean that a firm performs a CUF! CUF performance is contract specific and is evaluated by the awarding departments on each contract/procurement.

## **Evaluation of CUF by Awarding Departments**

Awarding department officials will evaluate and determine CUF performance for all SB/DVBE firms participating in a contract or procurement regardless of the acquisition type or payment method used. This determination will be made during bid evaluation for each SB, Microbusiness (Micro), DVBE or SB for the purpose of public works (SB-PW) prime contractor, subcontractor or supplier of goods/services listed in the bid, or quote. All bid responses that identify a certified firm as a prime contractor, subcontractor or supplier of goods/services must comply with CUF requirements to qualify for a bid SB preference and/or DVBE incentive. Post-award, state officials will monitor CUF compliance through the contract completion, including when subcontractor substitutions are requested, and during the contract close-out process.

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## Penalties, Sanctions and Actions for CUF Violations

Penalties are applicable to any person who violates the provisions of Government Code (GC) Section 14842.5 and/or Military and Veterans Code (MVC) Section 999.9(a), including SBs, DVBEs, large noncertified businesses, their principals and business affiliates, and state government employees. Specifically, MVC 999.9(a)(6) and GC 14842.5(a)(6) make it unlawful to fraudulently represent CUF in order to obtain a contract. Sanctions/penalties include:

### DGS may:

- Revoke SB and/or DVBE certification for a minimum of five to 10 years
- Suspend firms (certified and non-certified) from doing business with the state for three to 10 years
- Refer to Attorney General for civil action

### Civil action, Misdemeanor

- First violation: \$10,000 – \$30,000
- Second and subsequent violations: \$30,000 – \$50,000/each
- Pay all costs incurred by state and attorney's fees
- Jail up to six months, and/or up to \$1,000 fine

## What Can an SB/DVBE do to Ensure CUF Compliance?

- Assure that you meet all five CUF requirements on every contract/procurement.
- When notified you have been used on a contract as a subcontractor, verify with the prime contractor what services and/or products you are providing under that contract.
- Respond to all requests for CUF information from state officials throughout the process including explaining the ordering, invoicing, payment processing and return processing as appropriate.
- Report CUF concerns and/or file a complaint at **SB.DVBECOMPLIANCE@dgs.ca.gov** or (916) 375-5936.



## For questions about CUF and more information:

Visit: [www.dgs.ca.gov/PD-CUF](http://www.dgs.ca.gov/PD-CUF)

Email: [OSDSHelp@dgs.ca.gov](mailto:OSDSHelp@dgs.ca.gov)

# Tools and Resources

Brochures, videos, Frequently Asked Questions (FAQs) and other resources to help SBs and DVBEs can be found at [www.dgs.ca.gov/PD-SB-DVBE-Resources](http://www.dgs.ca.gov/PD-SB-DVBE-Resources) and on [caleprocure.ca.gov](http://caleprocure.ca.gov)

For questions or assistance, email [BusinessOutreach@dgs.ca.gov](mailto:BusinessOutreach@dgs.ca.gov)



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