

Frequently Asked Questions Regarding Commercially Useful Function (CUF)

1. What is the purpose of CUF?

The state provides significant incentives and preferences to certified SBs or DVBEs. Providing these incentives/preferences must be justified. Commercially Useful Function (CUF) is defined in the Military and Veterans Code (MVC) Section 999(b)(5)(B) for Disabled Veteran Business Enterprises (DVBEs) and in Government Code Section 14837(d)(4)(A) for Small Business (SB), Microbusiness (Micro), Small Business for the purpose of Public Works (SB-PW) and Non-Profit Veteran Service Agencies (NVSA). CUF applies to suppliers, **whether prime bidders or subcontractors**, who have California certifications for one or more of the socio-economic programs (e.g., SB, SB-PW, DVBE, NVSA) and requires that they perform a distinct element of the contract work in order to qualify to receive any available bid preference or incentive. CUF compliance provides reasonable assurance that no SB or DVBE is used as a pass-through on the contract. CUF compliance ensures that the incentives or preferences provided as part of the bid evaluation process are given for services and/or goods that are part of the contract.

2. Why do we have this CUF Evaluation form?

DGS in cooperation with several departments has developed this document to provide guidance to individual buyers who must determine CUF compliance. Sub-questions are provided to assist the evaluator to identify CUF elements for each question. Please provide detailed responses to the sub-questions in the space provided on the worksheet. After completing the worksheet, please indicate whether or not the supplier meets CUF criteria by checking “Yes” or “No” in the box provided. This Supplier must receive a positive CUF evaluation to qualify for an incentive or preference offered in the solicitation.

3. The Department of General Services, Procurement Division's, Office of Small Business and Disabled Veteran Business Enterprise Services (OSDS) is the state's certifying agency that administers the Small Business and DVBE Certification Programs. Doesn't OSDS check CUF compliance when the supplier applies for certification? Who is responsible for verifying CUF?

CUF can only be determined for a specific contract when compared to the specifications in that contract's statement of work (SOW). The buyer and contract manager are responsible for obtaining from the DVBE or SB the supporting information and documentation e.g., Completed Bidder's Declaration, Confirmation Letter/Form (as described in the DVBE Program Requirements), Standard Form 843 DVBE Declarations (if applicable) and Certification of CUF Compliance signed by the bidder under penalty of perjury regarding CUF for each DVBE business participating in the fulfillment of the contract whenever a bid claims SB or DVBE participation. The buyer/contract manager is also responsible for obtaining the Final Reporting documentation after the completion of the contract per the General Provisions and Broadcast Bulletins #: P-06-21, dated November 19, 2021.

4. Is a Bidder Declaration required for every procurement?

Yes. The supplier must complete a Bidder Declaration (DGS PD 05-105) unless the bid is completed using Fair and Reasonable (cost less than \$5,000) techniques. For Fair and Reasonable, it is acceptable for the buyer to complete a verbal Bidder Declaration (DGS PD 05-106) for the procurement file. Exceptions: see State Contracting Manual, DVBE Incentive and Competitive Solicitations.

5. Should I trust what is written on the Bidder Declaration or do I have to investigate further?

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The Bidder Declaration should be reviewed for accuracy and if clarification is required, it can be requested. The bidder should also submit the written, signed confirmation/form as well and provide a detailed response regarding what the SB or DVBE role will be in the procurement. Buyers can then use all of this information, along with any other supporting documentation and use the CUF evaluation form to promote thorough investigative research was performed during the buyer's CUF evaluation.

6. Do I have to evaluate CUF on solicitations for services?

Yes.

7. How much time should I spend on each CUF evaluation?

As long as it takes to review and use the documentation submitted by the bidder, making sure the Bidder Declaration identifies ANY **person, firm, corporation, or organization contracting to perform part of the prime's contract**, (this includes manufacturers, design engineers, truck/chassis supplier, etc.), the Confirmation Letter/Form signed by all parties as detailed in DVBE Program Requirements and the Standard 843 DVBE Declarations (if applicable) and signed Certifications for CUF Compliance (MVC Section 999.10(a)(3)). Use this information to complete the CUF Evaluation and Determination Worksheet. Attach additional CUF evaluation documentation to the worksheet including internet research, certifications, contractor-provided information, email correspondence or telephone notes.

At the end of the procurement the buyer needs to ensure the supplier submits their final participation amounts and payments as specified in the General Provisions and Broadcast Bulletin #P-06-21.

8. If a response to one of the questions on the CUF Evaluation Worksheet is no, what is the next step?

A "No" response to any of the five (5) questions will result in a determination that the bid is non-compliant with CUF. A business must meet ALL of the CUF requirements in order to qualify for the SB preference and/or DVBE incentive and depending on the participation requirements of the solicitation document, may result in the bid being deemed non-responsive.

If participation was required and the bid is non-compliant to CUF the bid would be rejected. If participation was not required, the bid may not be rejected but would not qualify for any preference and/or incentive. If this is a draft bid, the prime will still have a chance to correct this situation.

9. Can a supplier be somewhat CUF compliant?

No. The supplier must be compliant with all five evaluation questions. If the supplier is found to be compliant for one question and not for another, the supplier is evaluated as not compliant.

10. Is there a protest process for CUF?

While there is no formal protest process for CUF, Bidders can always follow the protest and/or dispute process either outlined in the solicitation document or the General Provisions.

11. Where should I go with questions regarding CUF?

Review the State Contracting Manual, the Commercially Useful Function Policy Document, and the FAQ's. If guidance is still required, questions should be directed to your supervisor,

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department's SB/DVBE Advocate and legal counsel prior to contacting DGS' Office of Policies, Procedures and Legislation or Office of Legal Services.

12. When and how often should I consult with my department's SB/DVBE Advocate?

As often as necessary to fulfill your role on behalf of the State of California.

13. If this supplier was compliant last time, do I have to evaluate CUF again for this procurement?

Yes. Each certified supplier (prime or subcontractor) must be evaluated, for each procurement, even if the same items are to be procured.

14. What am I required to do if I discover that the prime contractor or subcontractor is not providing all and/or accurate information regarding elements of my CUF evaluation?

If this occurred during the solicitation process, seek assistance from your supervisor and legal counsel.

15. What happens if a supplier doesn't use a specified SB or DVBE subcontractor during the contract as identified in the Bidder Declaration?

- SB subcontractor: After award of a contract based on the application of the Non-Small Business Subcontractor preference, the prime contractor must use the SB subcontractor unless a substitution is requested in writing to the awarding department and the awarding department approves the substitution in accordance with Title 2 California Code of Regulations (CCR), Section 1896.10.
- DVBE subcontractor: The prime contractor must use the DVBE subcontractor unless a substitution is requested in writing to the awarding department in accordance with 2 CCR, Section 1896.73. Approval by both the awarding department and DGS/OSDS is required prior to the commencement of any work by DVBE subcontractors for all DVBE substitutions. You can access the DVBE Substitution Form and Instructions on the following link: <http://www.documents.dgs.ca.gov/dgs/fmc/gsp/dgSPD07-06.pdf>.

If the prime doesn't use the substitution processes as outline above, immediately contact your supervisor, SB/DVBE Advocate and legal counsel. To learn more about SB and/or DVBE program abuse and requirements for reporting suspected abuse, please use this link [Small Business and DVBE Program Violations](#).

16. Is a CUF evaluation required during the SB or DVBE substitution process?

Yes. The substitute SB, DVBE or NVSA must be evaluated for CUF.

17. During contract management, what are some of the indicators that the SB or DVBE is not CUF compliant?

Some indicators are:

- The SB, DVBE or NVSA complains that they are not being used to perform work stipulated in the bid.
- The SB, DVBE or NVSA complains that they are not being paid.
- The prime or different business performs the work specified in the Bidder Declaration.
- The SB, DVBE or NVSA is no longer continuing to provide the goods/services listed in the initial bid response.