

# Commercially Useful Function Overview SB/DVBE Programs

SB/DVBE Advocate Quarterly Meeting

July 6, 2016

# Commercially Useful Function (CUF)

Why?

- Purpose and Legislative Intent

What?

- Definition and Applicability

Who?

- Roles and responsibilities

How?

- Resources

Next?

- What's next?



# CUF Purpose, Legislative Intent

## Purpose

- To provide reasonable assurance that no SB/DVBE is used as a pass-through on contracts.
- To prevent artificial/incidental SB/DVBE participation to meet the bid requirements.
- To ensure SB/DVBE incentives/preferences provided at bid evaluation are for services/goods that are part of the contract.

## Authority

SB 1510 (Statutes of 2012) strengthened CUF requirements in:

<http://www.dgs.ca.gov/pd/Programs/OSDS/legislation.aspx>

- SB - Government Code 14837(d)(4)(A)
- DVBE - Military and Veterans Code 999(b)(5)(B)

# What is CUF?

A SB/DVBE certified firm (prime contractor, subcontractor or supplier of goods/services)...

❑ Performs CUF when is doing all of the following:

- ✓ Executing a distinct element of the contract work including supplying of goods/services.
- ✓ Performing, managing, or supervising the work including supplying of goods/services.
- ✓ Performing work that is normal for the firm's business services and functions.
- ✓ Is responsible, with respect to products, inventories, materials and supplies required for the subcontract, for negotiating price, determining quality and quantity, ordering, installing (if applicable), and paying for the material.
- ✓ Not subcontracting a portion of the work greater than expected by industry practices.

❑ Does NOT perform CUF if:

- ✓ An extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of SB/DVBE participation.
- ✓ Not being used to perform the work as stipulated in the bid.
- ✓ No longer used to provide good/services listed in initial bid response.

# CUF and SB/DVBE Certified Firms

**All California-certified SBs and DVBEs  
(contractors, subcontractors and  
suppliers of goods/services)  
bidding on / participating in a state contract,  
regardless of the procurement approach or  
the payment method used,  
must perform CUF!**

# CUF-Related Roles and Responsibilities

Awarding Department	OSDS
<p style="text-align: center;"><b>Take the CalPCA CUF Training!</b></p> <p><b>Pre-contract award:</b></p> <ul style="list-style-type: none"> <li>• Review Bidder Declaration</li> <li>• Conduct CUF Evaluations</li> <li>• Perform research, market analysis</li> </ul> <p><b>Post-contract award:</b></p> <ul style="list-style-type: none"> <li>• Determine if primes/subcontractors perform CUF</li> <li>• Bid Protest/dispute</li> <li>• Approve/deny subcontractor substitutions</li> <li>• Monitor contract performance</li> <li>• SB/DVBE Advocates, buyers, legal work together to:               <ul style="list-style-type: none"> <li>✓ Address SB/DVBE complaints</li> <li>✓ Report program abuse allegations to OSDS within 60 days.</li> </ul> </li> </ul>	<p style="text-align: center;"><b>CUF does not exist outside of a contract!</b></p> <ul style="list-style-type: none"> <li>• No CUF responsibilities at certification time</li> <li>• Approve/deny SB/DVBE certification</li> <li>• Assist SB/DVBE Advocates</li> </ul> <ul style="list-style-type: none"> <li>• Review, approve/deny all DVBE substitutions</li> <li>• Receive and address complaints.</li> <li>• Evaluate program abuse allegations from departments, businesses and public</li> <li>• Impose sanctions (revocation, suspension) for program abuse charges</li> </ul>
<p><b>Cal-PCA Training</b></p>	



# CUF-Related Penalties and Sanctions

## Military and Veteran Code 999.9

### MVC 999.9(a) Violations, including CUF-related

### MVC 999.9(b) Penalties and sanctions:

- Misdemeanor: jail and/or \$1,000 fine
- Civil penalties:
  - 1<sup>st</sup> violation: \$10,000 - \$30,000
  - 2<sup>nd</sup> violation +: \$30,000 - \$50,000/each
- Costs and attorney's fees

### MVC 999.9(c) DGS authority to:

- Suspend from doing business with the state 3-10 years
- Revoke SB and/or DVBE certification for :
  - 1<sup>st</sup> violation : 5 years
  - 2<sup>nd</sup> violation: 10 years
- Refer to Attorney General for civil penalties if sufficient grounds

# CUF Resources

**DGS Website:** <http://www.dgs.ca.gov/pd/home.aspx> under **Buying Through State Contracts** tab:

- Sample CUF Departmental Policy
- FAQs regarding CUF
- CUF Evaluation and Determination Worksheet
- DVBE Incentive Program Requirements for Goods and Information Technology

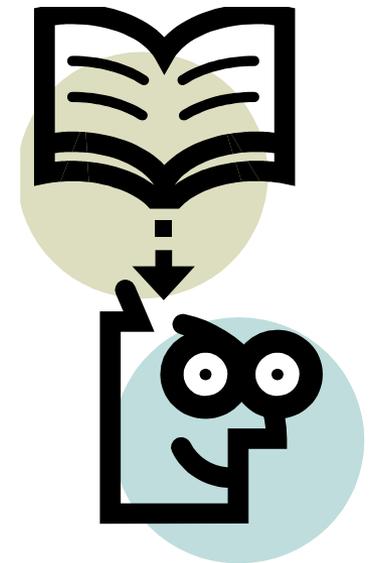
*Updated October 2015*

## **Contact :**

- Contracting/Procurement Officials
- SB/DVBE Advocates, Directory available at:  
<http://www.dgs.ca.gov/pd/Programs/OSDS/advocate.aspx>
- OSDS Website: <http://www.dgs.ca.gov/pd/Programs/OSDS.aspx>

# What's next?

- Quarterly Customer Forums (state agencies)
- Quarterly Purchase Authority Roundtables (PART)
- Quarterly SB/DVBE Advocates Meetings
- SCM Update on CUF-related sections
- Upcoming CalPCA CUF Training



# What's next?

- Upcoming CalPCA CUF Training

## CalPCA 2016/17 Class Schedules



<i>Commercially Useful Function 1/2 Day Workshop (In Class) - 2016/17 (1:00 pm - 4:30 pm)</i>		
Track #	1/2 day	Registration
CUF 1601	07/20/16 Wed.	05/20/16 Friday
CUF 1602	08/16/16 Tues.	
CUF 1603	10/04/16 Tues.	08/04/16 Thursday
CUF 1604	10/19/16 Wed.	
CUF 1605	12/01/16 Thurs.	
CUF 1606	01/31/17 Tues.	11/30/16 Wednesday
CUF 1607	02/08/17 Wed.	
CUF 1608	03/30/17 Thurs.	01/30/17 Monday
CUF 1609	04/04/17 Tues.	

(Dates subject to change.)

# Questions?

Office of Small Business and Disabled Veteran Business Enterprise

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