



**CUF**

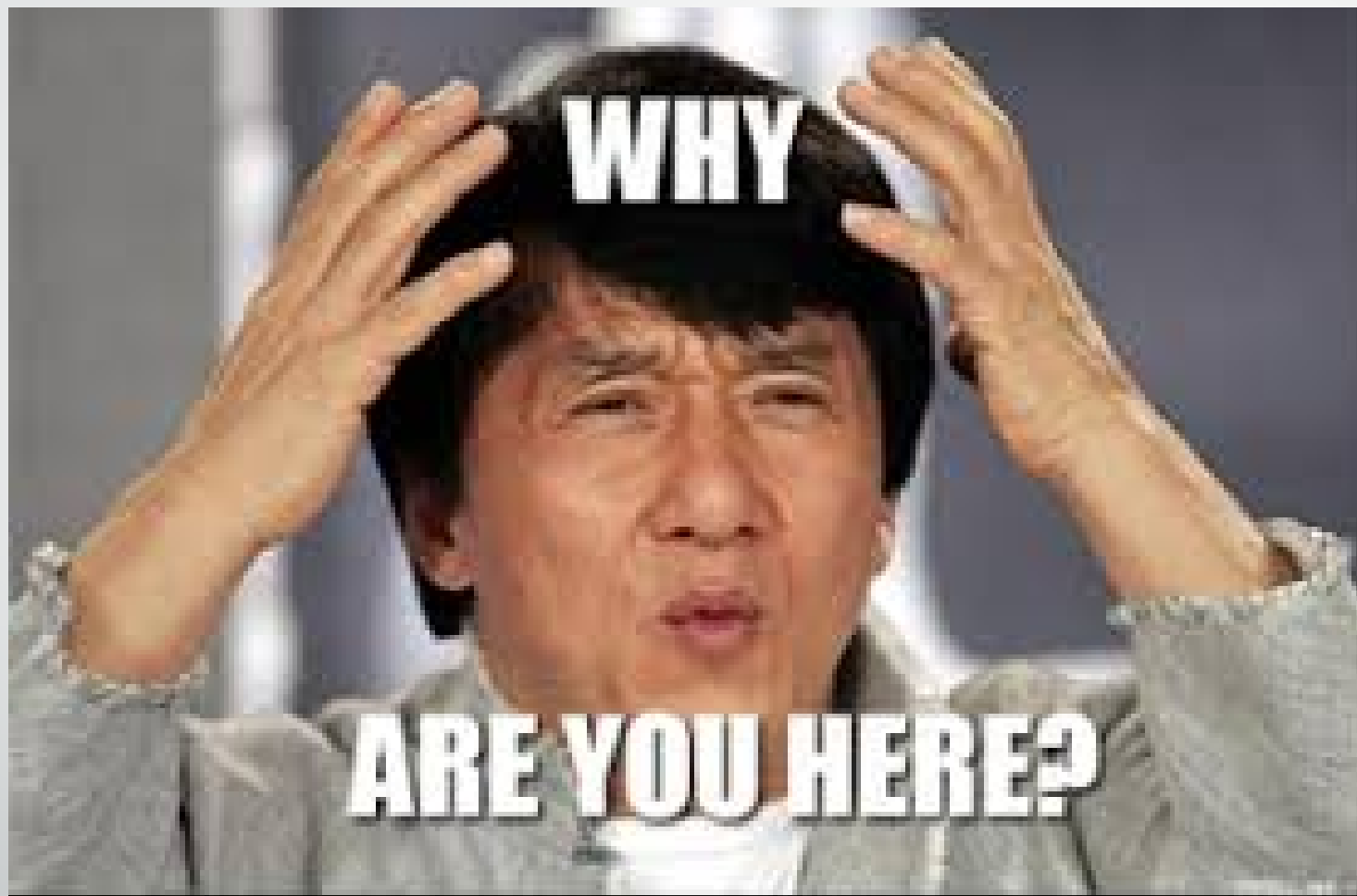
**Commercially Useful  
Function**

**SB/DVBE Programs**



Office of Small Business and DVBE Services  
Certification Unit

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# What is Program Abuse?

Gov Code: 14842.5 MCV 999.9

(1) Fraudulently obtain or attempt to obtain

- public monies or contract awarded by the state
- to which a person is not entitled.

(2) Fraudulently represent SB/DVBE participation

- in order to obtain or retain a bid preference
- or a state contract.

(3) Fraudulently represent a CUF

- in order to obtain or retain a bid preference
- or a state contract.





- What is CUF?
- What are Your Responsibilities?
- How Do You Evaluate CUF?
- What Resources are Available to You?
- Questions

# CUF REQUIREMENT

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

# What is CUF?

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

Performs CUF when does all of the following:

- ✓ Executes a **distinct element** of the contract work including supplying of goods/services.
- ✓ **Performs** manages, or supervises **the work** including supplying of goods/services.
- ✓ Performs 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.
- ✓ **Does not subcontract** a portion of the work greater than expected by industry practices.



# What is CUF is Not?

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

Does NOT perform CUF if:

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





# CUF Purpose, Legislative Intent

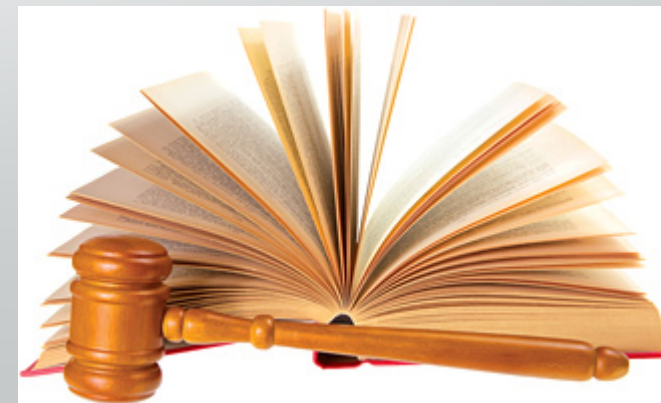
## Purpose

- To reasonably assure that SB/DVBEs are not used as **pass-throughs** on contracts.
- To prevent **artificial SB/DVBE** participation to meet 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:

- SB – Gov. Code 14837(d)(4)(A), Ca Code of Reg.(CCR) 1896.15
- DVBE - Military and Veterans Code 999(b)(5)(B), CCR 1896.71



# CUF-Related Roles and Responsibilities

SB/DVBE	Awarding Department	DGS - OSDS
<p style="text-align: center;"><b>Know your CUF requirements!</b></p> <p><b>Pre-contract award:</b></p> <ul style="list-style-type: none"> <li>• Meet <u>all</u> 5 CUF requirements</li> <li>• Submit documentation supporting CUF compliance, upon request</li> </ul> <p><b>Post-contract award:</b></p> <ul style="list-style-type: none"> <li>• Perform CUF throughout the contract term</li> <li>• Carry out work as listed</li> <li>• Notify contracting official/ advocates of any CUF-related issues or when suspecting illegal substitution</li> <li>• Primes: Seek approval for SB/DVBE substitution prior to beginning work, check for CUF</li> </ul>	<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 for all SB/DVBE bidding/participating on each contract</li> <li>• Perform research, market analysis, request information from bidders if needed</li> </ul> <p><b>Post-contract award:</b></p> <ul style="list-style-type: none"> <li>• Monitor that certified SB/DVBE primes, subcontractors, and suppliers perform CUF</li> <li>• Bid Protest/dispute</li> <li>• Approve/deny subcontractor substitutions</li> <li>• Submit approved DVBE substitutions to OSDS</li> <li>• Monitor contract performance</li> <li>• SB/DVBE Advocates, buyers, and legal work together to:               <ul style="list-style-type: none"> <li>✓ Address SB/DVBE complaints</li> <li>✓ Investigate program abuse allegations and report findings and recommendation to OSDS within 60 business days.</li> </ul> </li> </ul>	<p style="text-align: center;"><b>CUF does not exist outside a contract!</b></p> <ul style="list-style-type: none"> <li>• No "CUF intent" responsibilities at certification time</li> <li>• Certify SB, DVBEs</li> <li>• Assist SB/DVBE Advocates, buyers, contract manager. SB/DVBE with CUF issues</li> <li>• Approves DVBE requirement/incentive waivers</li> <li>• Educate/increase awareness on CUF requirements to state, small and large businesses</li> <li>• Review approved DVBE substitutions</li> <li>• Receive and address complaints</li> <li>• Conduct certification compliance reviews</li> <li>• Evaluate program abuse allegations from departments, businesses and public</li> <li>• Impose sanctions (revocation, suspension) for program abuse charges</li> <li>• Refer cases to Attorney General if sufficient grounds</li> </ul>



OSDS is responsible for certifying  
SB and DVBE businesses,

Why doesn't OSDS evaluate CUF?

### SCM 3.A2.7

A business performing a CUF is one where the contract administrator determines that the business does all of the following:

- Is responsible for a distinct element of the work of the contract
- Carries out its obligation by actually performing, managing or supervising the work involved
- Performs work that is normal for its business, services and functions
- 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.
- Is not further subcontracting a portion of the work that is greater than that expected to be subcontracted by normal industry practices



SCM 3.A2.7 cont.

A California certified SB and/or DVBE contractor, subcontractor, or supplier will not be considered to perform a CUF if the role of the contractor or supplier 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 SB, MB, or DVBE participation. After award, the contract administrator must monitor compliance with CUF for the duration of the contract.

**Departments must document their evaluation of CUF compliance in the procurement file. The CUF Evaluation and Determination Worksheet or some other equivalent must be used to document CUF compliance.**

Evaluate Carefully, CUF is not always what it seems to be.



The supplier must complete a **Bidder Declaration (GSPD-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 (GSPD-05-106) for the procurement file. Exceptions: see SCM, Vol. 2, Chapter 3 and Leveraged Procurement Agreements.

The Bidder Declaration should be reviewed for accuracy and if clarification is required, can be requested. The bidder should also submit the written, signed verification/form as well as 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.

## How much time should you 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 and/or Incentive Requirements Packet and the Standard 843 DVBE Declarations (if applicable). 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-19-14.



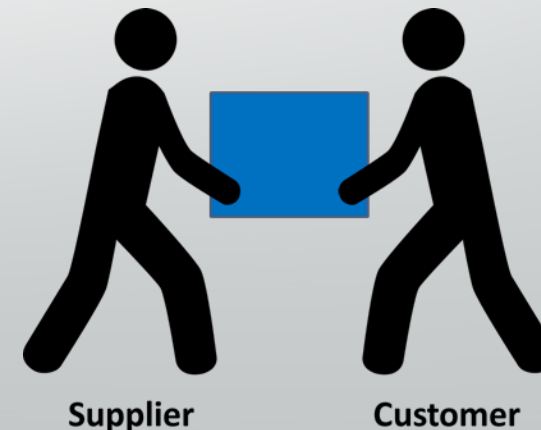
A **supplier** must operate a store or warehouse where inventory - materials, supplies and/or equipment - are bought and regularly kept in stock. A supplier must:

- (1) purchase and keep these materials in stock,
- (2) have a method to sell the materials to the public, and
- (3) not just supply materials for a single contract.

The following is a general guideline (not a rule)

Over forty percent (40%) of the items supplied to customers of a supplier must come from the firm's inventory.

A supplier must control the purchasing and selling of the supplies using its own name, and they must take legal title to all the items.





A **broker** is a third-party intermediary between consumers of items and manufacturers, suppliers, or other entities that sell items from a regular inventory.

Brokers do not make the same capital investments as suppliers. Brokers do not have a warehouse, inventory or, usually, a delivery structure, often only having an office with very few employees

## Drop Shipping and Large Bulk Guidelines

Suppliers of large bulk items must provide over 40% of the supplies they sell pursuant to a contract from inventory in their warehouse in order to be deemed a supplier for that contract.

While some items may be drop-shipped due to the specific needs in a contract, the supplier must take legal responsibility for the items at all times.

Drop shipping is the delivery of goods from the manufacturer directly to the retailer, without going through usual distribution channels. An item may be drop-shipped because it is a custom order, a specialized item or a large volume of product which cannot be held in stock.

Documents that may be helpful to prove supplier status.

1. Detailed and itemized inventory, including wholesale and retail dollar value and proof of purchases.
2. Warehouse lease agreement or deed for space showing square footage and location.
3. Current financial statement, including balance sheet and profit & loss statement.
4. Invoices showing purchases of commodities from all manufacturers with which the supplier transacts business. This includes lines of credit letters from each manufacturer and stocking distributor agreements for each manufacturer stocked or represented.
5. A copy of all vehicle registrations for use by the business (if applicable), including any additional documents or shipping agreements for the use of third-party shipping companies.
6. Detailed narrative that explains how goods are delivered to clients.
7. Business/Corporate Tax Returns for the most recent 2 tax years,
8. Copies of the firm's largest signed contracts and/or agreements completed with clients in the last 2 years. All contracts must include a description of the commodities provided, method of delivery, and prices or rates charged. Also include copies of invoices to the client showing billing for the commodities sold, and proof of payment at completion.

## Broker Example #1

**XYZ Building Products** markets itself as a supplier of heavy construction, highway and building materials.

1. **XYZ** provided

- (A) insufficient bank lines of credit to cover millions of dollars in inventory sales,
- (B) no proof of payment for physical inventory purchases, and
- (C) no proof of payment for delivery systems or necessary warehouse equipment.

2. **XYZ** provided single page distribution agreements that did not include any detail on **XYZ's** payment structure.

3. **XYZ** operates from a home office and an out-of-state office with one employee. No documents were provided on the location or employee.

4. Google search of their warehouse location showed the warehouse was a small showroom unlikely to have but a small amount of material in stock. The amount of materials made the firm's ability to effectively supply quantities typically required on contracts questionable.

## Broker Example #2

**Site R' Us Distribution** defines itself as a distributor of construction and janitorial supplies, including paint, concrete ties and HVAC supplies, among other items.

In response to requested supplier documents, only the business tax returns and personal financial statements were submitted.

This created two issues:

1. Required documents to prove supplier status were missing; and,
2. The business tax returns did not show that **Site R' Us** holds the needed majority of inventory required for their contracts in stock.

**Site R' Us** also provided a website link that rerouted to a catalog as proof of their inventory, instead of providing an itemized inventory list that reflected changes from sales. We could not confirm that the firm owned the inventory that it was selling from the website link.

**Site R' Us** does not have a warehouse, inventory, employees or stocking agreements with any of the distributors and/or manufacturers **Site R' Us** orders from. All of **Site R' Us'** demonstrated activities and supplies are determined on a project-to-project basis.

## Office of Small Business & Disabled Veteran Business Enterprise Services (OSDS)

If you encounter technical difficulties while in the process of re-certification, please email us at [OSDSHelp@dgs.ca.gov](mailto:OSDSHelp@dgs.ca.gov). We apologize for any inconvenience this may cause you.

The DGS Office of Small Business and Disabled Veteran Enterprise Services' certification system (FI\$Cal) and the CaleProcure is currently experiencing technical difficulties with the recertification process of applications. Please do not start the recertification application until further notice. You will receive an email from our office with a resolution as soon as possible. If you do not hear from the certification office before your firm's certification expiration date or you have any questions, please contact us at [OSDSHelp@dgs.ca.gov](mailto:OSDSHelp@dgs.ca.gov) or 916.375.4940. Thank you for your patience.

The DGS PD, Office of Small Business and DVBE Services (OSDS) is the state's certifying agency that administers the small business and DVBE certification programs.

In addition, the [Outreach Section](#) assists small and disabled veteran businesses by participating in outreach events, providing resource guidance and supporting the businesses through advocacy.

▶ [Office of Small Business & Disabled Veteran Business Enterprises Scorecard](#)

▶ [SB / DVBE Certification Program](#)

▶ [Search for SB / DVBE Suppliers](#)

▶ [Non-profit/NVSA Programs](#)

▶ [DVBE and Small Business Program Violations and Sanctions](#)

▼ [Commercially Useful Function \(CUF\)](#)

- [Sample of a CUF Departmental Policy](#) (PDF)
- [FAQs regarding CUF](#) (PDF)
- [CUF Evaluation and Determination Worksheet](#) (MS Word)
- [DVBE Program Requirements for Goods & Information Technology](#) (PDF)
- [CUF Overview Presentation\\_CalVET July 2016](#) (PDF)

QUESTIONS?







**THANK  
YOU**



# CONTACT INFORMATION

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