

**Department of General Services**  
**Procurement Division**  
**Office of Small Business and DVBE Services (OSDS)**

# Commercially Useful Function Overview SB/DVBE Programs

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# 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

SB/DVBE	Awarding Department	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 on CUF-related issues</li> <li>• Seek approval for SB/DVBE substitution (primes) prior to beginning work</li> <li>• Notify awarding departments' when suspecting illegal substitution</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</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>• 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, 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 doesn't exist outside a contract!</b></p> <ul style="list-style-type: none"> <li>• No CUF responsibilities at certification time</li> <li>• Certify SB, DVBEs, Non-profit Veteran Services Agencies (NVSA)</li> <li>• Recognize Non-profit agencies</li> <li>• Assist SB/DVBE Advocates</li> <li>• Approves DVBE requirement/incentive waivers</li> </ul> <ul style="list-style-type: none"> <li>• Review, approve 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>



Cal-PCA Training

# 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

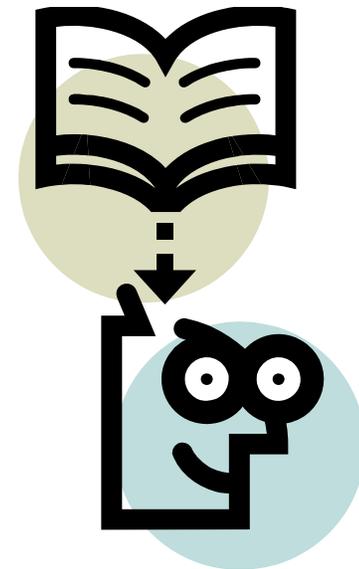
*Updated October 2015*

## Contact:

1. Your Contracting/Procurement Officials
2. SB/DVBE Advocates, Directory available at:  
<http://www.dgs.ca.gov/pd/Programs/OSDS/advocate.aspx>
3. 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
- CalPCA CUF Resources



# Questions?

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