



COMMERICALLY USEFUL FUNCTION (CUF)

What small business and DVBEs need to know when doing business with California state government

Overview

It is the law. All California-certified small businesses (SB) and disabled veteran business enterprises (DVBEs) doing business with the state must perform a Commercially Useful Function (CUF). Performing CUF is a critical requirement for all California-certified firms – SB and DVBE – that do business with the state (Government Code Section 14837 and Military and Veterans Code Section 999).

What is CUF?

To perform a Commercially Useful Function (CUF), an SB and/or DVBE must do all of the following:

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 subcontract – 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 bidding and/or participating on any state contract as a contractor, subcontractor, or supplier of goods and/or services, regardless of the procurement type or payment method.

A contractor, subcontractor, or supplier will not be considered to perform a CUF if the contractor's, subcontractor's, or supplier's 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 small business, microbusiness or DVBE participation.

Being certified as a 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!

Penalties, Sanctions and Actions

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:

- Misdemeanor: jail up to six months, and/or up to \$1,000 fine.
- Civil penalties:
- 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.

DGS has the authority to:

- Revoke SB and/or DVBE certification for a minimum of 5 to 10 years
- Suspend firms from doing business with the state three to 10 years.
- Refer to Attorney General for civil action.

For Questions

For more information, visit the OSDS webpage at:

www.dgs.ca.gov/pd/Programs/OSDS.aspx and click on the Commercially Useful Function menu bar.

Call OSDS at (916) 375-4950 or email OSDSHelp@dgs.ca.gov