

WAC 468-17-060 Commercially useful function. Under the enforceable goals program, commercially useful function (CUF) restrictions apply to all SBEs, mini-businesses, micro-businesses and VOBs. These businesses must perform a CUF in order for their participation to be counted against any goal. A business performs a CUF when it is both responsible for the execution of the work of the contract and it meets its responsibility under the contract by actually performing, managing, and supervising the work involved. If any materials or supplies are needed to perform the contract, the business must negotiate price, determine quality and quantity, order the material, install (if applicable), and pay for those materials or supplies itself.

Additional considerations when making a determination on a CUF are as follows:

(1) A SBE, VOB, micro-business or mini-business does not perform a CUF if its role is limited to that of an extra participant in a transaction or contract or it is involved in a project for the purposes of creating a semblance of SBE, VOB, micro-business or mini-business participation.

(2) Other relevant factors that may be considered when evaluating whether a SBE, VOB, micro-business or mini-business is performing a CUF include industry practices, the amount of work subcontracted and whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing.

(3) In addition, a business that functions as a supplier shall:

(a) Be the manufacturer of the goods or materials or assume the actual and contractual responsibility for furnishing the goods or materials and executing material changes in the configuration of those goods or materials; or

(b) Secure a contract or distributor agreement with a manufacturer to act as an independent authorized representative capable of passing on product warranties to the purchaser.

(4) Factors which may indicate that a supplier is not performing a commercially useful function include, but are not limited to, the following:

(a) A minimum amount of inventory is not maintained;

(b) Billing and shipping arrangements are performed by nonowners or staff of nonowners;

(c) A significant amount of deliveries are shipped directly from the producer or manufacturer to the end user;

(d) The firm does not take ownership of the product.

[Statutory Authority: RCW 39.04.155, 43.19.727, 47.01.101, and 47.28.030. WSR 21-19-031, § 468-17-060, filed 9/10/21, effective 10/11/21; WSR 19-12-026, § 468-17-060, filed 5/29/19, effective 6/29/19.]