

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RULES GOVERNING THE DEVELOPMENT OF PROGRAMS TO INCREASE PARTICIPATION OF WOMEN, MINORITY, DISABLED VETERAN, LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT)¹ AND PERSONS WITH DISABILITIES BUSINESS ENTERPRISES IN PROCUREMENT OF CONTRACTS FROM UTILITIES, COMMUNITY CHOICE AGGREGATORS, AND ELECTRIC SERVICE PROVIDERS, AS REQUIRED BY PUBLIC UTILITIES CODE SECTIONS 366.2 and 8281-8286

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1. GENERAL

1.1. Intent

1.1.1. Purpose

These rules implement California Public Utilities Code (Pub. Util. Code) § 366.2 and §§ 8281-8286, which require the Commission to establish rules for (1) electric utilities, gas utilities, water utilities, wireless telecommunications service providers, telephone utilities, and electric service providers with gross annual California revenues exceeding \$15,000,000 and their Commission-regulated subsidiaries and affiliates and (2) community choice aggregators with gross annual revenues exceeding \$15,000,000 to submit annual plans and reports, excepted as noted below, for purposes of increasing procurement in all categories from business enterprises owned and controlled by women, minority, disabled veteran, and LGBT. Persons with disabilities was added to the Supplier Diversity Program by the Commission. Additionally, pursuant to Pub. Util. Code § 366. 2(m)(1), these rules direct community choice aggregators to submit different information for annual plans, meaning detailed and verifiable annual plans to address increasing procurement from small and local business enterprises. All utilities are referred to herein as “utilities.” Non-utility entities, meaning electric service providers and community choice aggregators, are collectively referred to herein as “other covered entities.”

1.1.2. Scope

The Commission may revise GO 156 on the basis of experience gained in the application and/or changes in legislation.

1.1.3. Relief for Undue Hardship

In cases where these rules result in undue hardship or unreasonable expense to a utility or other covered entity, the utility or other covered entity may request relief from the Commission in accordance with the Commission's Rules of Practice and Procedure. Where the relief requested is minor or temporary in nature, a utility may apply for such relief through an advice letter filing. Any advice letter filing must, at a minimum, be served on the service list of Rulemaking 21-03-010 (or successor proceeding).

1.2. Applicability

To the extent set forth herein, these rules apply to electric utilities, gas utilities, water utilities, wireless telecommunications service providers, telephone utilities, and electric service providers with gross annual California revenues exceeding \$15,000,000 and their commission-regulated subsidiaries and affiliates. To the extent set forth herein, these rules also apply to community choice aggregators with gross annual revenues exceeding \$15,000,000.

1.3. Definitions

1.3.1. Commission

“Commission” means the California Public Utilities Commission, as provided for in Article XII of the California Constitution.

1.3.2. U.S. Citizens or Legal Alien

Under these rules, persons owning an eligible suppliers must be either U.S. citizens or legal aliens with permanent residence status in the United States.

1.3.3. Women Business Enterprise

“Women business enterprise” means (1) a business enterprise (a) that is at least 51% owned by a woman or women or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more women, and (2) whose management and daily business operations are controlled by one or more of those individuals.

1.3.4. Minority Business Enterprise

“Minority business enterprise” means (1) a business enterprise (a) that is at least 51% owned by a minority individual or group(s) or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more minority groups, and (2) whose management and daily business operations are controlled by one or more of those individuals. The contracting utility or other covered entity shall presume that minority includes, but is not limited to, African Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups as defined herein.

1.3.5. LGBT Business Enterprise

“LGBT business enterprise” means (1) a business enterprise (a) that is at least 51% owned by a lesbian, gay, bisexual, or transgender person or persons or (b) if a publicly owned business, at least 51% of the stock of which is owned by one or more lesbian, gay, bisexual, or transgender persons; and (2) whose management and daily business operations are controlled by one or more of those individuals.

1.3.6. Persons with Disabilities Business Enterprise

“Persons with disabilities business enterprise” means (1) a business enterprise (a) that is at least 51% owned by a person or persons with a disability or (b) if a publicly owned business, at least 51 % of the stock of which is owned by one or more persons with a disability; and (2) whose management and daily business operations are controlled by one or more of those individuals.

1.3.7. Disabled Veteran

“Disabled veteran” refers to a veteran of the military, naval, or air service of the United States with a service-connected disability who is a resident of the State of California.

1.3.8. Disabled Veteran Business Enterprise

“Disabled veteran business enterprise” is defined in Section 4, herein.

1.3.9. African American Person

“African American person,” for purposes of GO 156, refers to a person having origins in

any black racial groups of Africa.

1.3.10. Hispanic American Person

“Hispanic American person,” for purposes of GO 156, refers to a person of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.

1.3.11. Native American Person

“Native American person,” for purposes of GO 156, refers to a person having origin in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.

1.3.12. Asian Pacific American Person

“Asian Pacific American person,” for purposes of GO 156, refers to a person having origin in Asia or the Indian subcontinent, including, but not limited to, persons from Japan, China, the Philippines, Vietnam, Korea, Samoa, Guam, the U.S. Trust Territories of the Pacific, Northern Marianas, Laos, Cambodia, Taiwan, India, Pakistan, and Bangladesh.

1.3.13. Other Groups and Individuals

“Other groups or individuals” means persons found to be disadvantaged by the U.S. Small Business Administration pursuant to Section 8(a) of the Small Business Act, as amended (15 U.S.C. 637 (a)) or the U.S. Secretary of Commerce, pursuant to Section 5 of Executive Order 11625.

1.3.14. Control

"Control" means exercising the power to make policy decisions.

1.3.15. Operate

To "operate" means to be actively involved in the day-to-day management. It is not enough to merely be an officer or director.

1.3.16. Goal

"Goal" means a target which, when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota.

1.3.17. Excluded Category

"Excluded category" means a category of products or services which may be removed from the dollar base used to establish goals, pursuant to former Section 8.5 of this General Order, because of the established unavailability of eligible suppliers capable of supplying those products or services.

1.3.18. Short-Term Goal

"Short-term goal" means a goal applicable to a period of one (1) year.

1.3.19. Mid-Term Goal

"Mid-term goal" means a goal applicable to a period of three (3) years.

1.3.20. Long-Term Goal

"Long-term goal" means a goal applicable to a period of five (5) years.

1.3.21. Utility

"Utility" means electric utilities, gas utilities, water utilities, wireless telecommunications service providers, and telephone utilities with gross annual California revenues exceeding \$15,000,000 and their Commission-regulated subsidiaries and affiliates.

1.3.22. Clearinghouse

"Clearinghouse" means a Commission-supervised program or entity that shall conduct certifications/verifications and maintain a database of eligible suppliers for the use of utilities and other covered entities under the Commission's Supplier Diversity Program.

1.3.23. Subcontract

"Subcontract" means any agreement or arrangement between a contractor and any party or person (in which the parties do not stand in the relationship of an employer and an employee): (1) For the furnishing of supplies or services for the use of real or personal property, including lease arrangements, which, in whole or in part, is necessary to the performance of any one or more contracts; or (2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

1.3.24. Product and Service Categories

"Product and service categories" means product and service categories as defined by the Standard Industrial Classification (SIC) system maintained by the United States Department of Labor, Occupational Safety and Health Administration, as they currently read or as amended or as defined by any other updated classification system that supersedes the SIC system.

1.3.25. Other Covered Entity

"Other covered entity" means electric service providers and community choice aggregators.

1.3.26. Electric Service Provider

"Electric service provider" means as that term is defined in Pub. Util. Code § 218.3 and used in Pub. Util. Code § 8281-8286.

1.3.27. Community Choice Aggregator

"Community choice aggregator" means (1) an entity created pursuant to Pub. Util. Code §366.2; and (2) with gross annual revenues exceeding \$15,000,000, except when used herein to specifically reference community choice aggregators with gross annual revenues of less than \$15,000,000.

2. VERIFICATION/CERTIFICATION OF ELIGIBILITY

The following rules shall be used to verify the eligibility of business enterprises owned and controlled by women, minority, LGBT, or persons with disabilities for participation in procurement contracts under the Commission's Supplier Diversity Program. Disabled veterans are addressed in a separate section herein.

2.1. Clearinghouse to Supply Verification Form to Applicant

The Clearinghouse, as described in Section 3, shall supply a verification form to the applicant. An applicant completes the verification form and returns it to the Clearinghouse for processing. Suppliers/applicants that are certified/verified under GO 156 are referred to herein as "eligible suppliers."

2.2. Assessing Suitability of Eligible Supplier to Bid on Procurement Contracts

In assessing the suitability of an eligible supplier to bid for procurement contracts, a utility or other covered entity may require additional information or the completion of additional forms to comply with specific requirements created by the unique character of its business, such as insurance requirements, product and service codes, and bonding limits. A utility or other covered entity may not require additional information to verify that a business is in fact an eligible supplier under the Commission's Supplier Diversity Program.

2.3. Eligible Suppliers Submit Verification Forms Every Three Years

Eligible suppliers shall be required to submit verification forms at least once every three years to the Clearinghouse.

2.4. Completion of Verification Forms

Completion and submission of the verification form to the Clearinghouse serves to initiate a verification of the business as an eligible supplier under the Commission's Supplier Diversity Program. Submission of a verification form does not guarantee verification.

2.5. Endorsement of Ability to Perform

The fact that a business is certified/verified as an eligible supplier under the Commission's Supplier Diversity Program and included in the Clearinghouse's database of eligible suppliers is not an endorsement of its ability to perform and does not guarantee contracts with the utilities or other covered entities.

2.6. Availability of Verification Forms for Inspection

An applicant's verification form shall be available for inspection by the Commission.

2.7. Penalty for Falsification

Falsification of information by the applicant on the verification form is subject to penalties, as provided in Pub. Util. Code § 8285.

3. CLEARINGHOUSE

The Commission shall provide for a clearinghouse to share the name of and verification status of eligible suppliers under the Commission's Supplier Diversity Program.

(1) The Commission may establish and operate such a clearinghouse internally or authorize, by decision or resolution, a utility-formed entity or arrangement to fund the operation of such a clearinghouse. In authorizing a utility-formed entity or arrangement, the Commission will specify sufficient terms and conditions to specify how verifications and audits shall be performed and to ascertain and ensure that the Clearinghouse is operated in accordance with this General Order, Pub. Util. Code § 366.2, §§ 8281-8286, and other applicable legal requirements.

(2) The purpose of the Clearinghouse shall be to audit and verify the status of business enterprises as eligible suppliers under the Commission's Supplier Diversity Program and to establish and maintain a database of eligible suppliers that is accessible to the Commission, utilities, and other covered entities.

(3) The Clearinghouse auditing and verification program of suppliers shall preclude the need for a utility or other covered entity to audit and verify whether a business enterprise is an eligible supplier under the Commission's Supplier Diversity Program.

(4) The Clearinghouse shall distribute renewal verification forms to the eligible suppliers that are already verified at least once every three years. If the eligible supplier does not complete and return the renewal within a reasonable time, the Clearinghouse shall notify the eligible supplier that the eligible supplier will not be listed as an eligible supplier in the shared database until the renewal is completed and approved.

(5) The Clearinghouse shall post on its website a calendar of procurement-related information sharing and educational events and activities scheduled by utilities and other covered entities in furtherance of legislative policy and this General Order and may post additional information regarding procurement and/or educational opportunities.

(6) In addition to the Clearinghouse, the Commission may approve of third-party agencies to perform verifications of applicants. The Clearinghouse is authorized to accept certifications by approved third-party agencies, as appropriate, and to develop and implement a streamlined comparable agency verification process for any applicant that already has a certification through an approved third-party agency. For purposes of LGBT certification, the Clearinghouse shall establish a streamlined method of certification for entities already certified by a national organization. For purposes of certification of entities owned/controlled by persons with disabilities, the Clearinghouse shall establish a streamlined method of certification for entities already certified by the California Department of General Services or Disability:IN. After the Commission has approved of a third-party agency, applicants may choose between the option of (1) going directly to the Clearinghouse for verification or (2) going through an approved third-party agency, followed by a streamlined verification process with the Clearinghouse. If an applicant already has a certification through an approved third-party agency, the

applicant is encouraged to apply to the Clearinghouse through the streamlined verification process.

- (7) The following shall be the process for a third-party agency seeking to become a verifying agency under this General Order:
- (a) The requesting third-party agency shall submit a written request (herein “Request”) to the Commission’s GO 156 Staff;
 - (b) The Request shall include a detailed explanation showing that the requesting third-party agency’s objectives, eligibility requirements, required documentation, and review and certification processes are substantially similar to those of the Clearinghouse;
 - (c) The Commission’s GO 156 Staff must evaluate the Request and make a recommendation to the Commission within 60 days of receiving a Request;¹ and
 - (d) Upon review of the Request by the Commission’s GO 156 Staff, the GO 156 Staff will publish a draft resolution under the Commission’s Rules of Practice and Procedure granting or denying the requesting third-party agency its verifying agency status. This draft resolution shall be placed on the Commission’s Agenda for a vote.

4. DISABLED VETERANS

The following rules shall apply to disabled veteran business enterprises (also referred to as “DVBE”). The term "disabled veteran" is defined in Section 1.3.6 of this General Order.

4.1. Disabled Veteran Business Enterprise

Disabled veteran business enterprise is defined in Military and Veterans Code § 999, as required by D.92-06-030, to mean a business enterprise certified by the California Department of General Services as meeting all of the following requirements.

- (1) It is a sole proprietorship at least 51 percent owned by one or more disabled veterans or, in the case of a publicly owned business, at least 51 percent of its stock is owned by one or more disabled veterans; a subsidiary which is wholly owned by a parent corporation, but only if at least 51 percent of the voting stock of the parent corporation is owned by one or more disabled veterans; or a joint venture in which at least 51 percent of the joint venture's management and control and earnings are held by one or more disabled veterans.
- (2) The management and control of the daily business operations are by one or more disabled veterans. The disabled veterans who exercise management and control are not required to be the same disabled veterans as the owners of the business concern.
- (3) It is a sole proprietorship, corporation, or partnership with its home office located in the United States, which is not a branch or subsidiary of a foreign corporation, foreign

¹ See *e.g.*, D.06-08-031 and Resolution Exec.-001 (July 9, 2009).

¹All references to “days” shall be calculated as set forth in Rule 1.15 of the Commission’s Rules of Practice and Procedure.

firm, or other foreign-based business.

4.2. Certifying Agency

Pursuant to Pub. Util. Code § 8284(a)(2), DVBEs are verified/certified by the California Department of General Services. The Office of Small Business and Disabled Veterans Business Enterprise Services currently performs this verification/certification. The Clearinghouse shall accept the verifications/certifications by the Department of General Services as though the DVBE has been verified/certified by the Clearinghouse and include such DVBE in the Clearinghouse's database of the verified/certified eligible suppliers.

4.3. Qualifying as a Disabled Veteran Business Enterprise

In order to qualify as a DVBE, a business enterprise must meet the criteria in Section 4.1 and must present a current certificate from the California Department of General Services verifying that such criteria have been met.

5. LESBIAN, GAY, BISEXUAL, AND TRANSGENDER

Pursuant to D.15-06-007 and D.22-04-035, these rules shall apply to LGBT business enterprises (also referred to as "LGBTBEs"). By or before September 1, 2015 and thereafter, the Clearinghouse shall maintain a database associated with the LGBTBEs for purposes of the Commission's Supplier Diversity Program. To the extent permitted by law, utilities and other covered entities shall include LGBT business enterprises in annual reports and annual plans.

6. IMPLEMENTATION

Each utility and other covered entity shall design and implement a program to ensure that eligible suppliers in the Commission's Supplier Diversity Program are encouraged to become eligible suppliers of products and services to the utilities and other covered entities. Nothing in GO 156 authorizes or permits a utility or other covered entity to utilize set-asides, preferences, or quotas in the administration of its program in compliance with GO 156. The utility or other covered entity retains authority to use its legitimate business judgment to select the supplier for a particular contract.

6.1. Internal Program Development and Employee Training

Each utility or other covered entity shall maintain an appropriately sized staff to provide overall direction and guidance and to implement their own program requirements consistent with the Commission's Supplier Diversity Program and applicable law. Each utility and other covered entity shall provide an email address and telephone number on the website of the utility or other covered entity in a prominent location so that eligible suppliers and applicants are able to promptly obtain more information about these internal programs.

Each utility or other entity shall ensure that its staff with procurement responsibilities receive training in the implementation of the Commission's Supplier Diversity Program.

6.2. External Outreach and Activities

To the extent permitted by law, each utility or other covered entity shall implement an outreach program to inform and recruit eligible suppliers to apply for procurement contracts.

Outreach activities may vary for each utility or other covered entity depending on size, service territory, and specific lines of business. However, each utility or other covered entity shall, at a minimum, and to the extent permitted by law:

- (1) Actively seek out opportunities to identify eligible suppliers under the Commission's Supplier Diversity Program and to expand source pools;
- (2) Actively support the efforts of organizations experienced in the field who promote the interests of eligible suppliers under the Commission's Supplier Diversity Program;
- (3) Work with eligible suppliers under the Commission's Supplier Diversity Program to facilitate contracting relationships by explaining qualification requirements, bid and contracting procedures, materials requirements, invoicing and payment schedules, and other procurement practices and procedures;
- (4) At the request of any unsuccessful bidder, provide information concerning the relative range/ranking of the bid as contrasted with the successful bid. Information on additional selection criteria, such as warranty periods, maintenance costs, and delivery capability, shall be provided when requested if disclosure would not violate the proprietary nature of the specific contract element;
- (5) To the extent possible, make available to eligible suppliers under the Commission's Supplier Diversity Program lists of purchase/contract categories which offer them the best opportunity for success;
- (6) Encourage employees involved in procurement activities to break apart purchases and contracts, as appropriate, to accommodate the capabilities of eligible suppliers under the Commission's Supplier Diversity Program;
- (7) Summarize this General Order in outreach program handouts and electronic notices. Such summaries shall state that eligible suppliers under the Commission's Supplier Diversity will be furnished a complete copy of this General Order upon request; and
- (8) Offer the same assistance set forth in Section 6.2. to any interested person or entity, upon request.

6.3. Subcontracting Program

To the extent permitted by law, each utility or other covered entity shall establish and maintain a subcontracting program for the purpose of encouraging contractors to utilize eligible suppliers as subcontractors.

- (1) The subcontracting program shall serve as an enhancement to, not a replacement for, the utility's or other covered entity's outreach program to eligible suppliers under

the Commission's Supplier Diversity Program.

(2) The subcontracting program shall apply to the following: (1) Purchases/contracts exceeding \$500,000 for products and services; (2) Construction contracts exceeding \$1,000,000; and (3) Purchases/contracts which offer subcontracting opportunities, regardless of value, where appropriate.

(3) The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens, and the like.

(4) To the extent permitted by law, each utility or other covered entity shall encourage and assist its prime contractors to develop plans to increase the utilization of eligible suppliers under the Commission's Supplier Diversity Program as subcontractors. Prime contractors shall be encouraged to submit to the utility or other covered entity plans that include goals for the utilization of eligible suppliers under the Commission's Supplier Diversity Program as subcontractors. These plans may be incorporated into the contract between the utility or other covered entity and the prime contractor. The prime contractor may submit periodic reports on its compliance with the plan to the utility or other covered entity.

(5) Each utility or other covered entity is encouraged to incorporate in all purchase orders, requests for bid proposals, and other appropriate procurement documents related to procurement efforts subject to the subcontracting program, a statement similar to the following:

**UTILIZATION OF BUSINESS ENTERPRISES OWNED and
CONTROLLED BY WOMEN, MINORITIES, DISABLED
VETERANS, LGBT, AND PERSONS WITH DISABILITIES**

It is the policy of this company that business enterprises owned and controlled by women, minorities, disabled veterans, LGBT, and persons with disabilities (herein "diverse suppliers") shall have the maximum practicable opportunity to participate in the performance of contracts.

However, this policy shall not be used to exclude any qualified businesses from participating in contracting opportunities.

The contractor agrees to use its best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract. The contractor agrees to inform all prospective subcontractors of the opportunity to request from the Clearinghouse a verification application to be certified as a diverse supplier, return the completed application to the Clearinghouse for processing, and, if verified/certified, the prospective supplier will be included in the database, as a diverse supplier.

(6) Each utility or other covered entity is encouraged to inform its prime contractors that the prime contractor's good faith efforts to subcontract with eligible suppliers under the Commission's Supplier Diversity Program is a factor that, to the extent permitted by law, will be considered in the bid evaluation process. A statement to that effect could be included in all appropriate procurement documents.

(7) To the extent permitted by law, each utility or other covered entity shall monitor and include in its annual report to the Commission a summary of progress and efforts by prime contractors to increase the participation of eligible suppliers under the Commission's Supplier Diversity Program.

(8) To the extent permitted by law, each utility or other covered entity shall include in its annual plan to the Commission a description of future plans for encouraging both prime contractors and grantees to engage eligible suppliers under the Commission's Supplier Diversity Program in all procurement categories which provide subcontracting opportunities.

(9) Each utility or other covered entity may include awards to eligible supplier subcontractors in GO 156 reporting results.

7. REVIEW OF CERTIFICATIONS AND DENIALS OF CERTIFICATIONS

This section sets forth the review process for when an applicant seeks (1) a reconsideration of a denial to verify/certify by the Clearinghouse and (2) to file a Notice of Appeal with the Commission after the Clearinghouse confirms its denial. This section also sets forth a process for a third-party to challenge a verification/certification of an eligible supplier by the Clearinghouse.

7.1. Internal Review Process

The review process for a denial of verification/certification by the Clearinghouse includes two steps. First, the applicant may seek internal review from the Clearinghouse. If the Clearinghouse confirms the denial, as the second step, the applicant may seek review of the denial with the Commission by filing a Notice of Appeal under Resolution ALJ-377 (or successor rules) and the processes set forth therein. This resolution is available on the Commission's website. Resolution ALJ-377 sometimes refers to Notice of Appeals as complaints.

The Clearinghouse must implement an efficient internal review process and must promptly provide a copy of confirmation or reversal of the denial to the applicant.

7.2. Notices of Appeal

The Notice of Appeal is filed and docketed as a formal proceeding with the Commission. All docketed matters are accessible on the Commission's website. The Chief Administrative Law Judge shall designate an Administrative Law Judge to hear the Notice of Appeal.

The Administrative Law Judge shall make best efforts to notice the Notice of Appeal for hearing between 10 and 20 days after being assigned to hear the Notice of Appeal. The Administrative Law Judge may confer with parties to determine whether any material facts are in dispute prior to scheduling a hearing and consider whether a hearing is warranted. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing and, instead, schedule and notice the hearing beyond the time period noted above.

A party or jointly the parties may order an expedited transcript of the hearing. Costs may be associated with an order for an expedited transcript, in accordance with the Commission's requirements. In the absence of an expedited transcript, the Commission may address this matter after approximately 8 weeks, the length of time for preparation of a transcript (when no expedited order is placed).

A party may be represented at the hearing by an attorney or other representative.

At the hearing, the applicant carries the burden of proof and shall open and close but the Administrative Law Judge has the discretion to alter the order of presentation. Formal rules of evidence do not apply.

All relevant and reliable evidence may be received in the discretion of the Administrative Law Judge. No deference will be accorded to the underlying denial by the Clearinghouse. The standard of proof is preponderance of evidence.

The Administrative Law Judge shall issue a draft resolution for the Commission's consideration resolving the Notice of Appeal as soon as possible but no later than 30 days after the record of the Notice of Appeal is submitted. The draft resolution will be placed on the Commission's first available agenda, consistent with the Commission's Rules of Practice and Procedure. In the event the transcript of the hearing is not available, the Administrative Law Judge may delay issuing a draft resolution. This timeline would therefore be longer than set forth in Resolution ALJ-377.

From the date the Notice of Appeal is filed and served to and including the date the Commission's final resolution is published, neither party (or an attorney or agent acting on behalf of a party) shall engage in ex parte communications, except for procedural matters. More information about ex parte communications is available in the Commission's Rules of Practice and Procedure.

7.3. Third-Party Challenges

A third-party may challenge the certification/verification by the Clearinghouse of an applicant/eligible supplier under the Supplier Diversity Program whether the certification/verification is pending or completed. Third-party challenges must comply with all the following: (1) be in writing and sent to the Clearinghouse; (2) set forth with specificity the grounds for the challenge in ordinary and concise language; (3) include the name and address of the third-party; and (4) be served on the affected applicant or eligible supplier on the same day sent to the Clearinghouse. Such challenges may include supporting documentation.

The Clearinghouse will review third-party challenges to determine whether a factual basis for the questioning exists.

If the Clearinghouse determines insufficient factual basis for the challenge exists, it shall act as follows: (a) inform the third-party and subject applicant or eligible supplier of this determination in writing within 20 business days of the receipt of the challenge and (b) inform the third-party of the right to file a Notice of Appeal to the Commission. Resolution ALJ-377(or successor rules) sets forth the process for filing the Notice of Appeal. Additional procedures related to Notices of Appeal are set forth herein.

If the Clearinghouse determines that sufficient factual basis for the challenge exists, the

Clearinghouse shall require the applicant/eligible supplier to provide the Clearinghouse with any additional information needed to permit further evaluation of the verification/certification of the applicant/eligible supplier. Following the Clearinghouse's review and evaluation of the information presented by both the third-party and the applicant/eligible supplier, the Clearinghouse will propose a resolution and provide for an opportunity to respond to the Clearinghouse's proposed resolution. Then the Clearinghouse shall notify the third-party and the applicant or eligible supplier of its final verification decision and of the right to file a Notice of Appeal of this determination with the Commission pursuant to Resolution ALJ-377 (or successor rules) and the processes set forth herein.

During the pendency of a third-party challenge of a business enterprise already verified/certified by the Clearinghouse, the business enterprise will remain certified/verified.

If a third-party challenge does not include the minimum criteria set forth above or it withdraws its challenge, the Clearinghouse may continue its review to determine whether the challenge merits consideration.

7.4. Contract Disputes

Disputes regarding general contract-related matters, such as failure to win a contract award, must be brought before the appropriate court or other forum. The Commission's jurisdiction on contract related matters is limited. Some disputes or complaints regarding the Commission's GO 156 Supplier Diversity Program, such as complaints about non-compliance with GO 156, may fall under the complaint process set forth in the Commission's Rules of Practice and Procedure. The Notice of Appeal, described herein, is also available.

8. GOALS

Each utility and other covered entity shall set substantial and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of eligible suppliers under the Commission's Supplier Diversity Program. Goals shall be set annually for each major product and service category which provides opportunities for procurement. "Substantial and verifiable Goals" mean goals which are realistic and clearly demonstrate a commitment to encourage the participation of eligible suppliers. in contracts. Section 8 applies to community choice aggregators and electric service providers that are public entities to the extent permitted by law.

8.1. Setting Goals

The utilities and other covered entities shall consider the following factors in setting goals: (1) Total utility or other covered entity purchasing and/or contracting projections; (2) Availability of eligible suppliers under the Commission's Supplier Diversity Program and competitiveness in the geographical area served by the utility or other entity; (3) Market dynamics based on historical data and trends; and (4) Other appropriate factors which may increase the share of business for eligible suppliers under the Commission's Supplier Diversity Program.

8.2. Initial Minimum Goals

Each utility and other covered entity shall establish minimum long-term procurement goals for each major category of products and services purchased from eligible suppliers of not less than the following: 15% for minority business enterprises; 5% for women business enterprises; 1.5% for disabled veteran business enterprises; and 0.5% for 2022, 1.0% for 2023, and 1.5% for 2024 and beyond for LGBT business enterprises. No procurement goal has been adopted for persons with disabilities business enterprises. Contracts or purchases with eligible suppliers under the Commission's Supplier Diversity Program may only count toward one procurement goal. For example, a minority and women business enterprises may be counted toward one goal, either the minority business enterprise goal or the women business enterprise goal but not both.

8.3. Parity

The specification of initial long-term procurement goals shall not prevent the utilities or other covered entities from seeking to reach parity with those public agencies and other companies, which the Legislature states in Pub. Util. Code § 8281(b)(1)(B) are awarding 30% or more of their contracts to women, minority, disabled veteran, and LGBT business enterprises.

8.4. Other Goals

Procurement goals shall also be established for both minority women business enterprises and non-minority women business enterprises. These goals are intended to ensure that utilities and other covered entities do not direct procurement programs toward non-minority women business enterprises and minority men business enterprises to the detriment or exclusion of minority women business enterprises.

8.5. Subsets of Goals

Procurement goals shall be set for each major category of products or services. Goals need not be set for products or services which fall within an "excluded category" pursuant to former Section 8.5.²

8.6. Setting of Goals by Major Category of Products/ Services

For each major category of products and services where the minimum long-term procurement goals required by Section 8.2. are not met, the utility or other covered entity shall include a comprehensive discussion of all efforts made to find or recruit eligible suppliers of products or services. The utility and other covered entity may also explain in detail in its annual report how its ability to meet its procurement goals are affected because eligible suppliers capable of supplying certain products and services are unavailable or because sole source procurement is the only

² In D.03-11-024, the Commission revised GO 156 and modified Section 8.7. Prior to D.03-11-024, Section 8.5 provided: A utility may create an "excluded category" of products or services where it is clearly evident that WMDVBEs do not provide a specific product or service, or that sole source procurement is the only available procurement method. The utility shall bear the burden of demonstrating the unavailability of WMDVBEs capable of supplying such products or services. Because there may in the future be WMDVBEs capable of supplying products or services in an excluded category, the utility must justify in its annual report the continued existence of its excluded category. Excluded categories must be noted in the utility's annual report to the Commission on WMDVBE program progress and future plans.

available procurement method. As part of this explanation, the utility and other covered entity may also include data with exclusions pursuant to former Section 8.5. If such data is necessary to more fully explain why it has not been able to eliminate exclusions, provided that the utility or other covered entities report must contain the data without exclusions in the first sentence.

8.7. Excluded Category of Products/Services

A utility or other covered entity which is presently purchasing products or services from affiliates may subtract the dollars paid to affiliates for these products or services from the total dollars used as the basis for establishing procurement goals for purchases from eligible suppliers of these categories of products or services, provided that the utility or other covered entity encourages the affiliate to establish an appropriate subcontracting program where such affiliate employs subcontractors. Any utility or other covered entity which takes advantage of this section must in its annual report to the Commission state whether the affiliates have established a subcontracting program and describe the results of any such program. The utility or other covered entities annual plan must describe any future plans to encourage such a sub-contracting program. This section applies only to those utilities which are purchasing products or services from affiliates as of the effective date of the General Order adopted on May 30, 1988.

8.8. Procurement Goals Expressed

Procurement goals for each specific product or service category shall be expressed as a percentage of total dollars awarded by a utility and other covered entity to outside suppliers in that category; however, where appropriate, non-numeric goals may also be included.

8.9. Specific Product/Services Goals Expressed

Overall program procurement goals shall be expressed as a percentage of total dollars awarded to outside suppliers in all categories of products and services purchased by a utility or other covered entity other than products and services which are included in a fuel procurement base established pursuant to Section 8.11.

8.10. Method of Expressing Program Goals

Payments to other utilities and franchise tax fees, other taxes and postage need not be included in the standard procurement base used to establish procurement goals.

8.11. Payments

Each utility and other covered entity may establish a separate fuel procurement base for reporting progress and establishing goals for procurement of fuels from eligible suppliers under the Commission's Supplier Diversity Program. Utilities or other covered entities choosing to report fuel purchases separately from the purchase of other products and services must follow the guidelines set forth below: (1) Fuel used to power vehicles, heat utility facilities, and supply emergency generators may not be included in the fuel procurement base. Such fuel must be included in the standard procurement base used to establish goals, unless the fuel is purchased from another utility and thus subject to the exclusion authorized herein; (2) The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic on-shore natural gas

markets; (3) A utility or other covered entity which purchases eligible supplier's fuels other than domestic onshore natural gas must include such purchases in the fuel procurement base because Section 8.7. of this amended General Order does not permit utilities or other covered entities to exclude product and services categories for which there are available eligible suppliers; and (4) A utility or other covered entity may exclude purchases of fuel other than domestic onshore natural gas if such fuel qualifies for an exclusion under former Section 8.5. and if the utility or other covered entity plans for and reports on progress in increasing the procurement of such fuels from eligible suppliers.

8.12. Low Utilization

Each utility and other covered entity shall make special efforts to increase utilization and encourage entry into the marketplace of eligible suppliers in product or service categories where there has been low utilization of eligible suppliers, such as legal and financial services, fuel procurement, and areas that are considered technical.

8.13. No Penalty

No penalty shall be imposed for failure of any utility or other covered entity to meet or exceed procurement goals.

8.14. Report of Procurement Goals

Utilities and other covered entities shall report their procurement goals in their annual plans.

9. ANNUAL REPORT

Utilities and other covered entities shall provide an electronic copy of their Annual Report to the Commission's Executive Director on or before March 1 of each year. The Annual Report must provide details on the utilities' or other covered entities' programs created to comply with the Commission's Supplier Diversity Program. Section 9 does not apply to utilities and electric service providers with gross annual California revenues of \$15 million or less or community choice aggregators with gross annual revenues of \$15 million or less. Entities added to the Commission's Supplier Diversity Program by Senate Bill 255 (2019), e.g., certain community choice aggregators, electric service providers, and utilities, shall submit their first annual reports in March 2023. Annual reports shall include data on person with disabilities business enterprises starting March 2024.

9.1. Contents of Report

The Annual Report shall contain at least the following elements:

(1) A description of program activities engaged in during the previous calendar year. This description shall include both internal and external activities, and include the approximate amount of funding, to the extent available, directly expended on development and distribution of technical assistance to small and diverse businesses.

(2) A summary of purchases and/or contracts, with breakdowns by ethnicity, product and service categories compared with total contract dollars awarded to outside suppliers in those categories, and with information regarding the total number of

contracts, and the dollars awarded to eligible suppliers under the Commission's Supplier Diversity Program. Each utility or other covered entity shall report the number of eligible suppliers under the Commission's Supplier Diversity Program who have the majority of their workforce working in California, to the extent such information is readily accessible. Each utility or other covered entity shall also report the number of eligible suppliers under the Commission's Supplier Diversity Program that received direct spend during the reporting year.

(3) An itemization of program expenses provided in the format approved by Commission staff, as guided by Attachment A to D.95-12-045, D.15-06-007, and other relevant decisions.

(4) A description of progress in meeting or exceeding set procurement goals and an explanation of any circumstances that may have resulted in not meeting those goals. This subsection may not apply to community choice aggregators and electric service providers that are public agencies.

(5) A summary of prime contractor utilization of eligible subcontractors suppliers under the Commission's Supplier Diversity Program.

(6) A list of complaints received from eligible suppliers in the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status. For purposes of this subsection, a *complaint* means any written or verbal statement from an eligible supplier or third-party that the utility's or other covered entity's program is unsatisfactory or unacceptable.

(7) A description of any efforts made to recruit eligible suppliers for products or services in procurement categories where utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered technical. This subsection may not apply to community choice aggregators and electric service providers that are public agencies.

(8) Utilities and other covered entities shall retain all documents and data they rely on in preparing their annual reports for the longer of either three years or in conformance with the document retention policies of the utility or other covered entity. The utility or other covered entity shall provide these documents and data to the Commission, upon request.

(9) The utilities and other covered entities shall summarize purchases and/or contracts from eligible suppliers under the Commission's Supplier Diversity Program in product and service categories that include energy storage systems, vegetation management, renewable and non-renewable energy, wireless communications, broadband, smart grid, rail projects and electronic procurement, in addition to their current reporting categories. Utilities have discretion to segregate overlapped dollars. Utilities and other covered entities shall report renewable and nonrenewable energy procurement in a manner similar to their reporting of fuel procurement.

(10) The Commission's staff may conduct as many audits of utilities and other covered entities as it deems necessary but shall audit at least one annual GO 156 report randomly selected every two years from a different utility industry to confirm that the reported spend is accurate. The Commission's staff may determine the selection process

for this random selection and the audit methodology. The Commission's staff may conduct audits of any reports or data provided to the Commission by utilities and other covered entities regarding their participation in the Supplier Diversity Program.

(11) Each utility or other covered entity which elects to report fuel procurement separately must file with the Commission's Executive Director on or before March 1 of each year a separate detailed and verifiable report on participation in fuel markets by eligible suppliers under the Commission's Supplier Diversity Program. These reports must include, at a minimum, the results of purchases in each fuel category.

(a) Each utility or other covered entity shall report purchases by:

- (1) Market origin and fuel type;
- (2) Volume and dollar magnitude;
- (3) Term of sale, e.g., spot, intermediate, long term; and
- (4) Ethnicity and gender of the supplier.

(b) Each utility and other covered entity shall provide:

- (1) An explanation of how existing and/or changing market conditions are affecting the utility's or other covered entity's ability to meet or exceed its procurement goals for fuel (this subsection may not apply to community choice aggregators and electric service providers that are public agencies as laws may prohibit such procurement goals);
- (2) A comprehensive description of the specific out-reach programs used to seek eligible supplier fuel suppliers in each market in which fuel is purchased (this subsection may not apply to community choice aggregators and electric service providers that are also public agencies as laws may prohibit such procurement goals); and
- (3) A justification for any exclusion of a specific fuel category from the utility's or other covered entity's fuel procurement base.

9.2. Erosion of Internal Programs

This General Order is not intended to permit erosion of programs and reporting presently engaged in by a utility or other covered entity.

9.3. Further Breakdown of Reporting Authorized

Nothing in this General Order shall prohibit any utility or other covered entity from breaking down specific categories further than presently required (for example, reporting contracts awarded to Filipino Americans separately from those awarded to Asian Pacific Americans, or reporting male and female results within minority business enterprise classifications).

10. ANNUAL PLAN

The utilities and other covered entities shall provide an electronic copy of their Annual Plan to the Commission's Executive Director on or before March 1 of each year, that

includes a detailed and verifiable plan for encouraging procurement in all categories of eligible suppliers under the Commission's Supplier Diversity Program. Section 10 does not apply to utilities and electric service providers with gross annual California revenues between \$15 million and \$25 million. Section 10.1. does not apply to community choice aggregators or electric service providers that are also public agencies. Pursuant to Pub. Util. Code § 366.2(m)(1) and Section 10.2. below, the Annual Plans of community choice aggregators shall include a detailed and verifiable plan for increasing procurement from small, local, and diverse business enterprises in all categories, including, but not limited to, renewable energy, energy storage system, and smart grid projects. Entities added to the Commission's Supplier Diversity Program by Senate Bill 255 (2019), e.g., certain community choice aggregators, electric service provides, and utilities, shall submit their first annual plan in March 2023. Annual plans shall include, to the extent permitted by law, person with disabilities business enterprises starting in March 2024.

10.1. Utilities and Other Covered Entities:

The Annual Plan shall contain at least the following elements:

- (1) Short-term, mid-term, and long-term procurement goals, as required by Section 8, herein;
- (2) A description of program activities planned for the next calendar year. This description shall include both internal and external activities;
- (3) A plan for recruiting eligible suppliers of those products or services where utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered technical .
Plans for recruiting Eligible Suppliers in any "excluded category"
- (4) A plan for seeking and or cultivating eligible suppliers of those products and services where eligible suppliers are currently unavailable.
- (5) Plans for encouraging prime contractors and grantees to engage eligible suppliers
A plan for encouraging both prime contractors and grantees to engage eligible suppliers in subcontracts in all categories which provide subcontracting opportunities.
- (6) A plan for complying with the program guidelines established by the Commission, as required by Pub. Util. Code § 8283(c). The Executive Director's Office will be responsible for developing, periodically refining, and recommending such guidelines for the Commission's adoption in an appropriate procedural forum.

10.2. Community Choice Aggregators and Electric Service Providers that are Public Agencies

As set forth in Section 11, below, for community choice aggregators and electric service providers that are also public agencies, the annual plan shall contain at least the following elements: descriptions of program activities to increase procurement related to small, local, and diverse business enterprises planned for the next year in all categories, including, but not limited to, renewable energy, energy storage systems, and smart grid projects.

11. ANNUAL PLANS FOR COMMUNITY CHOICE AGGREGATORS AND ELECTRIC SERVICE PROVIDERS THAT ARE PUBLIC AGENCIES

As set forth in D.22-04-035, community choice aggregators and electric service providers shall comply with similar annual plan requirements as utilities and other covered entities, except that these annual plan requirements may be modified to reflect limitations in the law applicable to public agencies, as well as the fact that, at this time, energy procurement represents the majority of expenses for a typical community choice aggregator and electric service providers. In addition, for community choice aggregators these annual plans are limited by statute to increasing procurement from small, local, and diverse business enterprises. Staff will meet with community choice aggregators, electric service providers that are also public agencies, and stakeholders to develop the annual plan requirements, as needed. Staff will provide a copy of any revised reporting requirements to community choice aggregators, electric service providers, stakeholders, and the service list of this proceeding (or successor proceeding related to GO 156). To the extent permitted by law, these annual plan requirements must continue to promote the state policy of increasing contracts with (1) eligible suppliers and (2) small, local, and diverse business enterprises. Community choice aggregators and electric service providers shall submit their first annual plan in March 2023.

12. ANNUAL FORMS FOR SMALLER UTILITIES AND SMALLER ELECTRIC SERVICE PROVIDERS

Pursuant to Pub. Util. Code § 8283(f), this section sets forth the rules that apply to smaller utilities and smaller electric service providers that fall within the Commission's Supplier Diversity Program pursuant to statute, i.e., those with gross annual California revenues between \$15 million and \$25 million. These smaller utilities and smaller electric service providers shall annually, on or before March 1, electronically submit a "simplified form" to the Commission's Executive Director. The information to be included in the form shall be developed by the Commission's staff together with these smaller utilities and smaller electric service providers, as set forth in D.22-04-035. The Commission's staff will provide a copy of this simplified form via email to the service list of Rulemaking 21-03-010 (or the successor proceeding). The reporting requirements in Section 9 and Section 10 do not necessarily apply to these smaller utilities and smaller electric service providers. These smaller utilities and smaller electric service providers shall submit their first annual "simplified form" in March 2023.

13. COMMISSION ANNUAL REPORT TO LEGISLATURE

As required by Pub. Util. Code § 8283(e), the Commission shall provide an annual report to the Legislature (beginning January 1989) on the progress of activities undertaken by each utility or other covered entity to implement Pub. Util. Code § 366.2 and §§ 8281-8286 and this General Order.

In this annual report to the Legislature, the Commission shall recommend a program for carrying out the policy declared in the above-mentioned sections of the Pub. Util. Code, together with recommendations for any legislation it deems necessary or desirable to further that policy.

This annual report to the Legislature shall include recommendations to the utilities and other covered entities for the achievement of maximum results in implementing legislative policy and this General Order.

This annual report to the Legislature shall include information initially identified in Resolution Exec-001, which provides for monitoring and evaluation of the Supplier Clearinghouse “on a periodic basis.” As part of this monitoring and evaluation of the Supplier Clearinghouse, the Commission’s annual report to the Legislature will include an analysis of the existing contract between the Clearinghouse and the utilities (e.g., audits of revenues and expenditures associated with the certification program), as required by Resolution Exec-001.

14. WORKFORCE DIVERSITY AND BOARD DIVERSITY REPORTING

All utilities and other covered entities will include information regarding current reporting in other jurisdictions on workforce diversity and board diversity in annual reports, starting March 2023. The Commission’s staff will develop further reporting requirement during a phase 2 of Rulemaking 21-03-010. The Commission’s staff will provide the reporting requirements to the service list of Rulemaking 21-03-010 (or successor proceeding) and place the requirements on the Commission’s webpage for GO 156.

15. VOLUNTARY COMPLIANCE AND REPORTING

The Commission supports all efforts to voluntarily comply with the state policy of increasing procurement from diverse suppliers set forth in Pub. Util. Code §§ 8281-8286.

Pub. Util. Code § 366.2(m)(3) encourages community choice aggregators with gross annual revenues under \$15 million to adopt a plan for increasing procurement from small, local, and diverse business enterprises in all categories.

Pub. Util. Code § 8283(e)(1) encourages certain small utilities and electric service providers, i.e., those with gross annual California revenues under \$15 million, to adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement.

Pub. Util. Code § 8283(e)(2) encourages exempt wholesale generators, distributed energy resource contractors, and energy storage system companies to adopt a plan for increasing women, minority, disabled veteran, and LGBT business enterprise procurement and to voluntarily report activity in this area to the Legislature on an annual basis. Cable television corporations and direct broadcast satellite providers were previously included in Pub. Util. Code § 8283(e)(2).

16. COMMISSION ANNUAL *EN BANC* MEETING

The Commission shall hold an annual *en banc* hearing or other proceeding to provide all stakeholders, such as utilities, other covered entities, members of the public, community-based organizations, and eligible suppliers under the Commission's Supplier Diversity Program the opportunity to share ideas and make recommendations for effectively implementing legislative policy under Pub. Util. Code § 366.2 and §§ 8281-8286 and this General Order. The Commission's staff shall provide notice of the annual *en banc* broadly, including to the service list for the most recent proceeding pertaining to General Order 156 and any service lists pertaining to related topics. Notice shall also appear on the Commission's Daily Calendar.

(END OF APPENDIX B to D.22-04-035)