**California Public Utilities Commission**

**Date: February 27, 2024**

**General Order 156 Annual Reporting Requirement Frequently Asked Questions**

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**Abbreviations**

**CPUC** – California Public Utilities Commission

**PU Code** – California Public Utilities Code

**GO** – General Order

**WBE** – Women Business Enterprise

**MBE** – Minority Business Enterprise

**DVBE** – Disabled Veteran Business Enterprise

**DBE** – Disabilities Business Enterprise

**LGBT** – Lesbian, Gay, Bisexual, or Transgender

**LGBTBE** – LGBT Business Enterprise

**WMDVLGBTBE** – WBE, MBE, DVBE, and/or LGBTBE

**CCA** – Community Choice Aggregator

**NMSDC** – National Minority Supplier Development Council

**PPA** – Power Purchase Agreement

**Entities** - Electrical corporation, gas corporation, water corporation, telephone corporation, wireless telecommunications service provider, electric service provider, and/or Community Choice Aggregators

**GO 156 Audits**

**Question:**

What type of areas should entities be aware of for auditing under GO 156?

**Answer:**

Some areas entities should be aware of:

1. Reporting the value of early payment discounts. For example, if $100,000 contract has a two percent early payment discount and the entity pays only $98,000, they should report the paid amount, not the full contract amount.
2. Making sure all reported WMDVLGBTBE expenditures are to suppliers who have valid Supplier Clearinghouse certifications.
3. Reporting expenditures on a cash (date of payment) basis.
4. Making sure expenditures are correctly classified as prime contractor or subcontractor.
5. Making sure expenditures are applied to the correct diverse category (i.e., to ensure payments to a business with DVBE certification is not mistakenly reported as MBE).
6. Maintaining adequate documentation to substantiate any reported expenditures.

**Annual Report Submission**

**Question:**

When are GO 156 annual reports due? Will extensions be granted?

**Answer:**

GO 156 annual reports are due March 1st, of every year. The Commission’s expectation is that all GO 156 participants will submit their reports on time.  Extensions may be considered on a case-by-case basis, but **only for exceptional extenuating circumstances**.  Rule 1.1 of the California Code of Regulations Rules of Practice and Procedure [Rules of Practice and Procedure (ca.gov)](https://www.cpuc.ca.gov/proceedings-and-rulemaking/rules-of-practice-and-procedure) states that any correspondence submitted shall never mislead the Commission or its staff by an artifice or false statement of fact or law. (Authority cited: Section 1701, Public Utilities Code. Reference: Section 1701, Public Utilities Code.). Reports submitted to CPUC are under attestation to their accuracy and that they do not knowingly include errors, omissions, etc.

**Countable Spend**

**Question:**

What type of spend can I count in my annual report? Can I count all types of spend?

**Answer:**

You may count spend in all sourcing and procurement categories of product and services. General business expenditures, overhead, payments to other utilities, franchise tax fees, other taxes, postage, and reasonable items that can’t be procured are examples of what should not be included in your gross procurement totals. Fuel procurement should be reported separately.  See below for further details regarding fuel and power.

GO 156 Exceptions:

Water utilities can exclude the following categories from their gross procurement: purchased water, purchased power, pump taxes, all taxes, franchise fees, postage, and all other non- source able categories and affiliate transaction expenses.

Utilities and other entities can report fuel procurement separately:

* Applies only to domestic onshore natural gas, defined as gas purchase within the Continental U.S., or
* Fuel used to power vehicles, heat utility facilities, and supply emergency generators are included in the original diverse supplier procurement base, unless purchased from other utilities at which point, they are exempt from the diverse supplier procurement base by GO 156.
* Utilities and other covered entities shall report renewable and nonrenewable energy procurement in a manner like their reporting of fuel procurement.

**Question:**

Should reimbursements for staff travel be included in net procurement?

**Answer:**

Travel reimbursements or travel expenses are not considered a product or service and should not be included as procurement.  However, any travel expenses incurred in support  of your  supplier diversity program could be recorded in 9.1.3 under program expense.

**Question:**

Should awarded grants from the CPUC, CEC, DOE, etc. be included in GO 156 reporting?

**Answer:**

Grant funding should not be included in your company’s spend totals.

**Question:**

Does the supplier have to be certified to count the spend in annual reports?

**Answer:**

To include spend in your annual report the supplier must have a valid certification from the Supplier Clearinghouse.

**Question:**

Are there any circumstances under which an entity may count an expenditure with a supplier who is NOT certified?

**Answer:**

If an entity has spend with a supplier before the supplier is certified, they may count the spend for the entire calendar year in which the supplier becomes certified. If an entity has spend with a supplier whose certification has expired and is later renewed, the entity may count spend for the expired period if the supplier renews its certification within the same calendar year.

**Question:**

When do we count a transaction as a diverse spend?

**Answer:**

When the invoice is paid to a supplier verified and certified by the Supplier Clearinghouse.

**Diverse Supplier (WMDVLGBTBE) Revenue Reporting**

**Question:**

How do I report diverse suppliers’ revenues?

**Answer:**

Use the template below to report WMDVLGBTBE revenues. This information helps assess small diverse suppliers representation in utility and other entity contacts.



**Question:**

How do I fill out the template above and where will I find diverse suppliers revenue information?

**Answer:**

For the first table of the template, provide **the number** of MBE, WBE, LGBTBE, and LGBT a utility/entity contracted with for the reporting year broken down by four thresholds: (1) less than or equal to $1 million, (2) greater than $1 million but less than or equal to $5 million, (3) greater than $5 million but less than or equal to $10 million, and (4) greater than $10 million. The Supplier Clearinghouse has WMDVLGBTBE revenue information and use that information to complete “Revenue Reported to CHS” columns. To complete “Utility-Specific Summary” columns, refer to the contract(s) your utility/entity has with diverse suppliers and provide the information based on the contract(s) payment information.

The second table of the template refers to WMDVLGBTBE **revenues and utility/entity-specific payment information in dollars** broken down by four thresholds as listed in the paragraph above. For “Revenue Reported to CHS” columns, complete by providing the dollar amount for each column by obtaining the revenue dollar amount information from the Supplier Clearinghouse. For the “Utility-Specific Summary,” provide the utility/entity-specific contract payments dollar amount.

**Disadvantaged Business Enterprise (DBE)**

**Question:**

Does the CPUC’s Supplier Diversity Program use the term “DBE”?

**Answer:**

No, DBE is a term used by the federal government. The federal government certifies suppliers as DBEs for federal contracts and states contracts funded by the federal government. For example, the California Department of Transportation includes DBEs in projects funded by the federal government. CPUC’s Supplier Diversity Program does not recognize the federal government DBE certification. The CPUC’s Supplier Diversity Program accepts those suppliers certified by the Supplier Clearinghouse and uses the terms MBE, WBE, DVBE, and LGBTBE.

**Disabilities Business Enterprise**

**Question:** How is Disabilities Business Enterprise defined?

**Answer:** 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. This definition does not include a requirement that the owner be domiciled in California.

**Question:** Who will be the certifying agent for Disabilities Business Enterprises?

**Answer:** Businesses seeking to be certified as a person with disabilities business enterprise may submit an application to the Supplier Clearinghouse, consistent with the existing process for women, minority, and LGBT applicants. Also, the Commission designates Disability: IN as a “third-party agency” under GO 156. All businesses certified by Disability: IN automatically qualify under GO 156. The certification standards established herein are adapted from 49 Code of Federal Regulations (CFR) Part 23 and 26. <https://www.ecfr.gov/current/title-49/subtitle-A/part-23?toc=1>

**Elapsed Certification**

**Question:**

Is it permissible for an entity to include spend with a diverse supplier if the diverse supplier’s certification has elapsed?

**Answer:**

The entity can only include the spend for the time the diverse supplier’s certification was current. The entity cannot count the spend after the certification has elapsed.

**Certification**

**Question:**

Are employee stock ownership program (ESOP) firms eligible to apply for Clearinghouse certification?

**Answer:**

Yes

**Indirect Spend**

**Question:**

What is an example of indirect spend that could not be included in annual reports?

**Answer:**

Indirect spends are not included in annual reports. An example of indirect spend would be if a prime contractor (i.e. an engineering firm) whose contract is to provide engineering services hires an MBE to provide janitorial services: empty wastebaskets and provide general services. This indirect spend cannot be included in the annual report since the janitorial services is not part of the contract.

**Suppliers with Multi-Status**

**Question:**

If a supplier has multiple certifications, for example, owned by a minority female, is it categorized as an MBE or WBE?

**Answer:**

This type of supplier is referred to as multi-status because it has certification status as both an MBE and an WBE. There could be other types of multi certification combinations as well, MBE/LGTBE, DVBE/MBE, WBE/DVBE, WBE/LGTBE, etc.

**Question:**

How does an entity count suppliers with multi-status for the annual reporting?

**Answer:**

The entity may count, for example a supplier that is certified as both MBE and WBE, as either an MBE or WBE, but not both. For supplier with multiple certification status, the entity must pick one category to count the spend. The choice of category is at the discretion of the utility.

**Non-California Spend**

**Question:**

Does GO 156 allow entities to count and include diverse spend for non-California expenditures in annual reports?

**Answer:**

No, the expenditures an entity reports must be **in support of its California operations**.

**End of Year Invoicing – What is the Calendar Year for Reporting Purposes?**

**Question:**

If an entity is invoiced for a diverse expenditure on December 3rd of the closing year for the annual report and it takes the entity 45 days to process the invoice, would that expenditure count for the end of year report or the following year’s report. Additionally, if the diverse expenditure could be justified for December 3rd, what date would be used, the date of the invoice or the date the invoice was paid?

**Answer:**

The audit standards require “cash basis” and counted in the calendar year the invoice was paid.

**Subcontracting Expenditures**

**Question:**

May an entity count spending with third tier (and below) subcontractors?

**Answer:**

An entity may report expenditures with diverse subcontractors used below the 1st level of subcontracting. In other words, an entity may report expenditures with a diverse supplier who is not only a subcontractor but also a subcontractor to a subcontractor. GO 156 does not mandate or specify a level of subcontracting that cannot be reported. However, each entity should be aware that any expenditure reported to the CPUC must be verifiable and is subject to audit at any time. If an entity chooses to report diverse procurement beyond the initial subcontractor level (tier 3 and below), it must ensure it will be able to verify such expenditures upon the CPUC’s request. All subcontracting spend, at any level, must be well documented and specifically related to the project for which the prime contractor was hired. Entities should make sure their primes and subcontractors know that the program does not have quotas, set asides, or point systems, or permit any entity, prime contractor, or subcontractor to limit opportunities for businesses with diverse or non-diverse status.

**Utility Bills/Rentals**

**Question:**

Should entities include direct spend for their electric bill, rental of convention space, etc., in their annual reports?

**Answer:**

No payments for utility services can be submitted in annual reports. All expenditures must be consistent with the requirements of GO 156 for reporting purposes.

**U.S. Small Business Administration’s (SBA) 8a Businesses**

**Question:**

How do I capture the spend with SBA 8a suppliers?

Spend with 8a businesses who are women-owned is captured as WBE, minority-owned as MBE, and LGBT-owned as LGBTBE. If an 8a business has DVBE certification, the spend is captured as DVBE. If the type of ownership cannot be determined, and in those limited cases where the 8a business is non-diverse, the spend is captured in the “8a” category or if the category is unavailable, in the “Other” category.

**Franchise Businesses**

**Question:**

What is the rule regarding franchises owned by diverse suppliers? Can we count that spend if they are certified? For example, if an MBE owns a Marriott, would the spend count?

**Answer:**

If a diverse supplier owns a franchise, the same diverse supplier definitions under GO 156, Section 1.3 apply. Which means, as long as the Supplier Clearinghouse can *verify* the franchisee’s 51% ownership, and that the franchisee operates and controls the daily operations, the franchise can be certified and the spend counted.

**NMSDC Growth Initiative Certification**

**Question:**

As a part of NMSDC’s Growth Initiative, I have a supplier who just got its certification as a Minority Controlled Business. Does the Supplier Clearinghouse accept this certification, and can the firm receive Supplier Clearinghouse certification?

**Answer:**

A supplier must have at least 51% minority ownership (required by GO 156) for the Supplier Clearinghouse to grant certification. Under NMSDC Minority Controlled Business certification businesses must have at least 30% minority ownership. If a firm does not meet the 51% ownership criteria, the Supplier Clearinghouse cannot grant certification.

**Complaints**

**Question:**

What are considered complaints under GO156 Section 9.1.6?

**Answer:**

Complaint as defined in the CPUC Rules of Practice and Procedure Article 4 Section 4.1 (A): Any corporation or person, chamber of commerce, board of trade, labor organization, or any civic, commercial, mercantile, traffic, agricultural or manufacturing association or organization, or any body politic or municipal corporation, setting forth any act or thing done or omitted to be done by any public utility including any rule or charge heretofore established or fixed by or for any public utility, in violation, or claimed to be in violation, of any provision of law or of any order or rule of the Commission**.**

In simple terms, a complaint is a written or verbal statement from an eligible supplier or third-party that the program administered by the utility or other covered entity is unsatisfactory or unacceptable

**Fuel and Power Procurement**

**Question**

In annual reports, are all diverse expenditures reported in the same template?

**Answer**

No, fuel and power expenditures are reported in separate templates and are excluded from the other goods and services reporting template. Power and fuel spend totals should not be combined with other goods and services being reported.

**Question**

What is fuel and power procurements?

**Answer**

Fuel procurement – buying fuel to provide gas services to California customers. The procured fuel is not used to generate power (electricity).

Power procurement – buying power (electricity) and fuel (to generate power) to provide electric services to California customers.

**Question**

Who should report fuel procurement (fuel for non-generation)?

**Answer**

Entities that procure fuel to provide gas services to California customers report diverse fuel expenditures in the template prepared for fuel procurement for non-generation.

**Question**

How would accounting for power procurement be handled when payments are made to another CCA who is paying for procurement of a joint PPA for several CCAs?

**Answer**

The entity reporting is the one which holds the contract with the power source.

**Question**

If there is a mutual contract between a utility and a CCA, can that spend be included in annual reports?

**Answer**

No, such spend is not counted and thus excluded.

**California Workforce**

**Question**

Do we need to report on the number of diverse suppliers who have the majority of their workforce working in California?

**Answer**

Yes. Per D.11-05-019 and GO 156 section 9.1.2

“Each utility shall report the number of WMDVLGBTBEs who have the majority of their workforce working in California, to the extent such information is readily accessible.”

GO 156 requires this information be included in reports to the extent such information is readily accessible; and this information is readily accessible as utility may ask suppliers for this information and may also obtain this information from the Supplier Clearinghouse.

**CCA Annual Reporting**

**Question**

Are CCAs expected to include annual supplier diversity goals in their annual reports?

**Answer**

No, CCAs in their annual reports do not have to include supplier diversity goals.

**Question**

Would it be appropriate to include the following narratives in annual reports to describe a CCA’s internal and external plans to improve workforce diversity?

* Self-reported CCA board members demographics
* Engagement with Diverse Recruitment Channels for hires/contracts
* Efforts to minimize implicit bias in hiring/contracting
* Summary of previous CPUC data requests for CCA efforts to support diverse and inclusive workplaces
* Internal Diversity, Equity, and Inclusion efforts and trainings
* Workforce education and training programs and partnerships

**Answer**

Yes, all are appropriate to include in describing internal and external plans.

**Question**

PU Code Section 366.2(m) aspires for CCAs to increase procurement from small and local businesses. How can CCAs incorporate those spend in the annual reports?

**Answer**

In narration, CCAs can highlight their achievements with small and local businesses. They may also include data to show their progress and successes.