



2020 West El Camino Avenue, Suite 800
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NOTICE OF MODIFICATION TO TEXT OF PROPOSED REGULATION

CALIFORNIA CODE OF REGULATIONS

TITLE 22, DIVISION 7, CHAPTER 8

Sections: 95000-95014

Pursuant to the requirement of Government Code section 11346.8(c) and Section 44 of Title 1 of the California Code of Regulations, the Department of Health Care Access and Information hereby provides notice of changes made to proposed regulation Chapter 8 Hospital Community Reports (Sections 95000-95014) to Division 7 of Title 22 of the California Code of Regulations. The text of the regulation with proposed modifications is attached to this Notice. In addition, the Department is providing notice that documents the Department relied upon in adopting the proposed regulations have been added to the rulemaking file and are available for public inspection and comment.

The documents added to the rulemaking file are as follows:

- Initial Statement of Reasons – Addendum
- General Order 156 – California Public Utilities Commission

The Department will accept written comments on the proposed changes from June 15, 2022, to June 30, 2022. Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action. All comments must be received by HCAI by June 30, 2022.

Inquiries and written comments regarding the proposed action should be addressed to the primary contact person named below. Comments delivered by email are suggested. Comments may also be emailed, hand delivered, or mailed.

Sharon Takhar, Manager
Information Services Division
Department of Health Care Access and Information
Tel: (916) 326-3975
Email: Sharon.takhar@hcai.ca.gov
Mailing address: 2020 West El Camino Avenue, Suite 1100
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Inquiries and comments may also be directed to the backup contact person at the same mailing address:

Starla Ledbetter, Branch Chief
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Tel: (916) 326-3984
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All written comments received by June 30, 2022, which pertain to the indicated changes will be reviewed by the Department and will be summarized and responded to in the Final Statement of reasons. Please limit your comments to the modifications of the text.

Copies of the Notice of Modification to Text of Proposed Regulations, the Initial Statement of Reasons, Initial Statement of Reasons Addendum, the text of the modified proposed regulations, the Format and File Specifications for Submission of Hospital Supplier Diversity Reports Version 1.0, and the General Order 156 – California Public Utilities Commission can be accessed through the HCAI website at <http://www.hcai.ca.gov/Laws-Regs.html>.



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INITIAL STATEMENT OF REASONS

CALIFORNIA CODE OF REGULATIONS

TITLE 22, DIVISION 7, CHAPTER 8

Sections: 95000-95014

I. BACKGROUND INFORMATION

Assembly Bill (AB) 962 (Chapter 815, Statutes of 2019) made several changes to California law to address hospital supplier diversity.

Health and Safety Code Section 1339.85 includes the following statements: "It is in the state's interest to encourage competitive business opportunities for all of its people. Hospitals are uniquely positioned to build relationships within the communities they serve through the development, inclusion, and utilization of certified minority, women, lesbian, gay, bisexual, transgender (LGBT), and disabled veteran business enterprises whenever possible. By providing that each major hospital submits to the Department of Health Care Access and Information (HCAI) a report explaining the hospital's supplier diversity statement and expressing its goals regarding certified minority, women, LGBT, and disabled veteran business enterprises, and the office placing that information on the office's internet website, that online resource will help facilitate these supplier relationships."

The program has two basic components. Hospitals and hospital systems/regional networks must submit an annual report, no later than July 1st, detailing their hospital supplier diversity to HCAI. Additionally, HCAI must convene a hospital diversity commission comprised of various, specific stakeholders. Per the statute, the purpose of this commission is to do the following: "(1) Advise and provide recommendations to the director and the hospital industry on the best methods to increase procurement with diverse suppliers within the hospital industry, (2) Meet quarterly or as deemed necessary by the director, (3) Promote and provide outreach to hospitals that are actively engaged in supplier diversity issues."

HCAI is proposing to adopt regulations to implement Chapter 2.17 Hospital Procurement Contracts: Disclosures (Health and Safety Code section 1339.85 et seq.).

II. THE PROBLEM TO BE ADDRESSED

New regulations are required to implement Chapter 2.17 Hospital Procurement Contracts: Disclosures (Health and Safety Code section 1339.85 et seq.), which imposes notice and reporting requirements on hospital supplier diversity. Provisions of Chapter 2.17 must be interpreted and made specific in order for the regulated entities to comply with the requirements. Regulations are required to successfully establish this statutorily mandated new program.

III. THE PURPOSE AND BENEFITS OF THIS REGULATORY ACTION

The purpose of the proposed regulations is to successfully establish this statutorily mandated new program. The benefit is to achieve the goal of AB 962, as related to Chapter 2.17. Health and Safety Code Section 1339.85 includes the following statements: "It is in the state's interest to encourage competitive business opportunities for all of its people. Hospitals are uniquely positioned to build relationships within the communities they serve through the development, inclusion, and utilization of certified minority, women, lesbian, gay, bisexual, transgender (LGBT), and disabled veteran business enterprises whenever possible."

IV. NECESSITY

The addition of Chapter 8 of Division 7 of Title 22, Sections 95000–95014, is necessary to implement Chapter 2.17 (Health and Safety Code section 1339.85 et seq.). The regulations are necessary to interpret and provide specificity regarding the various components of the legislation in order to implement the new mandated program.

V. THE SPECIFIC PURPOSE OF EACH AMENDMENT

Section 95000 Definitions

Section 95000 is added to provide definitions to a number of terms used in the proposed regulations. The definitions are needed to ensure that the program regulations that follow meet the clarity requirement and to provide the specificity necessary for compliance with the regulations and implementation of the new program mandated by Chapter 2.17.

When a hospital submits their hospital supplier diversity report, it is necessary to understand the various minority groups that pertain to the statute. In this instance, "Minority Business Enterprise" is further defined to include African Americans, Hispanic Americans, Native Americans and Asian Pacific Americans.

Additionally, definitions for "Procurement," "Tier I Procurement," "Tier II Procurement," and "operating expenses" have been added to help differentiate and aggregate the data accordingly.

In addition, a number of the definitions are standard administrative definitions: "Department" is defined to mean the Department of Health Care Access and Information (HCAI).

Section 95001 Contact Registration

A contact person for a hospital or hospital system/regional network must register with the Department for the purpose of receiving advanced notice of report due dates and to submit the required report. Section 95001 is added to specify the required information an organization must provide when registering with HCAI. The requested information is necessary for receipt of notices and ability to submit their reports.

Section 95002 Individual Hospital Supplier Diversity Report

Section 95002 is added to provide clarification on the data elements and narrative descriptions required to be reported by hospitals in their hospital supplier diversity report. In addition, information regarding how to submit the aggregated data are included.

Section 95003 System/Regional-Level Hospital Supplier Diversity Report (optional)

Per the Health and Safety Code Section 1339.87, “A hospital that is part of a hospital system or is organized within a regional network within a hospital system may report the diversity of its procurement in compliance with this subparagraph from a systemwide or regional network level if there are suppliers that provide services or goods to all hospitals within the hospital system or regional network.” Section 95003 clarifies that this report is optional for submission and also specifies the requirements if a system-level report is submitted.

Section 95004 Report Period and Due Dates

Section 95004 is added to provide clarification on the newly required hospital supplier diversity report due dates.

Section 95005 Extension Request

Section 95005 is added to provide clarification on how a hospital may request extensions on their required reports.

Section 95006 Method of Submission

Section 95006 is added to specify the required method to submit reports filed pursuant to Sections 95002-95003. Reports must be submitted electronically through HCAI's website using a new report submission portal; the submission methods are specified. Submitters have the option of uploading files for the required information or of entering the required information online. This is necessary to provide flexibility to the reporting hospitals. This section also provides the submission portal web address.

Such files shall comply with the Department's Format and File Specifications for Submission of Hospital Supplier Diversity Reports Version 1.0, dated December 31, 2021, which is necessary to clarify the specific requirements for completing reports in a comma separated value (.csv) file format.

Section 95007 Penalties for Late Filing of Reports

Section 95007 is added to specify that the Department will assess civil penalties when reports are filed late. Such penalties are authorized by HSC Section 1339.87, subdivision (c), which establishes one hundred dollars (\$100) for each day after the due date that the required report is not filed.

Section 95008 Penalty Assessment

Section 95008 is added to clarify how hospitals will be notified when penalties have been accrued, and how the penalty amount will be calculated.

Section 95009 Filing an Appeal

Section 95009 is added to specify that a hospital who has received notice of an accrued penalty may appeal the penalty assessment by requesting a hearing, that the request must be filed with HCAI's hearing officer, and that the request must include specified information. The required

information is necessary to identify the hospital filing the appeal and the matters being appealed.

Section 95010 Hearing Officer Contact Information

Section 95010 is added to provide contact information for HCAI's hearing officer. This is necessary as appeals and other documents must be filed with the hearing officer.

Section 95011 Prehearing Provisions

Section 95011 is added to specify that parties will receive advance notice of the hearing date and to require that copies of proposed hearing exhibits be submitted in advance of the hearing, which is necessary to provide time for review. The section also clarifies that parties may make certain requests in advance of the hearing – for schedule changes, venue changes, for language assistance, to have a court reporter record the hearing, and to consolidate matters for hearing.

Section 95012 Conduct of Hearing

Section 95012 is added to clarify the procedures by which the hearing will be conducted. The section specifies who will conduct the hearing, the method of conducting the hearing, the standards for admission of evidence and testimony at hearing, the means of recording the hearing, and that the hearing will be open to the public. These procedures are necessary to provide for a fair hearing consistent with established standards for administrative proceedings.

Section 95013 Settlement

Section 95013 is added to clarify that if a settlement of the appeal is reached between the hospital and HCAI before the hearing, the hearing will be canceled.

Section 95014 Decision

Section 95014 is added to define and provide notice of the process for adoption of a hearing decision by the Director of the Department.

VI. ECONOMIC IMPACT ANALYSIS

New regulations are required to implement Chapter 2.17 (Health and Safety Code section 1339.85 et seq.). HCAI has narrowly tailored the proposed regulations to implement the statutory requirements for the new program. The proposed regulations impose only minor additional reporting or other requirements on any businesses, organizations, or individuals.

Therefore, the Department concludes that:

- (1) This regulatory action will not create jobs within the state;
- (2) This regulatory action will not eliminate jobs within the state;
- (3) This regulatory action will not create new businesses;
- (4) This regulatory action will not eliminate existing businesses;
- (5) The benefits of the regulations are to achieve the goals of AB 962, as related to Chapter 2.17 (Health and Safety Code section 1339.85 et seq.) by implementing the newly

mandated program. Health and Safety Code Section 1339.85 includes the following statements: "It is in the state's interest to encourage competitive business opportunities for all of its people. Hospitals are uniquely positioned to build relationships within the communities they serve through the development, inclusion, and utilization of certified minority, women, lesbian, gay, bisexual, transgender (LGBT), and disabled veteran business enterprises whenever possible."

VII. EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

HCAI has determined that the adoption of the proposed regulations would not have an adverse economic impact on any business in the State of California because the regulations proposed are required to implement a new statutorily mandated program, to Chapter 2.17 (Health and Safety Code section 1339.85 et seq.).

VIII. TECHNICAL, THEORETICAL, OR EMPIRICAL STUDY, REPORTS, OR SIMILAR DOCUMENTS RELIED UPON

None.

IX. CONSIDERATION OF ALTERNATIVES

No reasonable alternatives have been identified by HCAI or have other been identified and brought to its attention that would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.



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INITIAL STATEMENT OF REASONS – ADDENDUM

CALIFORNIA CODE OF REGULATIONS

TITLE 22, DIVISION 7, CHAPTER 8

Sections: 95000-95014

NECESSITY

Section 95000 Definitions

Section 95000, subsections (f) and (g) includes definitions for “Minority Business Enterprise” and “Women Business Enterprise.” For these two terms, we added that they must be “physically located in the United States or its trust territories” in order to align ourselves with the statute. In addition, for “Minority Business Enterprise,” we omitted the “other groups” in the definition. By doing so, this would align with what is categorically listed in the statute; as defined in statute, “Minority” includes African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans.

For subsections (j) and (k), “Tier I Procurement” and “Tier II Procurement,” these terms were adopted from California Public Utilities Commission (General Order 156) (Rev. June 11, 2015), a document relied upon by the Department, to allow for comparability amongst other supplier diversity reports. These two tiers allow a determination of whether procurement is at a contractor-level or through a third party. This determination will enable the development and outreach programs based on tiers.

Section 95001 Contact Registration

With this new report program, HCAI has developed a new program that will allow report submitters to electronically submit their reports. This section illustrates how a report submitter can register for an account to receive notifications of due dates and to submit their reports.

In subsection (c), there is also a requirement that “each hospital shall update, through the online portal, within 15 days after any change in the person designated as the primary contact person, or in the primary contact person’s name, mailing address, business phone number, or email address.” The 15-day update requirement is needed as WMDVLGBTBE seeking to apply for contract or respond to solicitations may run up on a deadline that is 30 days. Therefore, the sooner contact information is updated the greater the likelihood of interested parties will be able to have questions answered before a deadline expires.

Additionally in subsection (c), we changed from “health facility” to “hospital” in order to maintain consistency with the rest of the Regulations text.

Section 95002 Individual Hospital Supplier Diversity Report

Subsection (b) (4) “Report Period Start Date,” we added “January 1 of prior calendar year” to clarify that the reporting period should begin with the prior calendar year.

Subsection (b) (5) “Report Period End Date,” we added “December 31 of prior calendar year” to clarify that the reporting period should end with the prior calendar year.

In subsection (b) (13) and (14), we have added, “If \$0 were spent on procurement for a category, you may enter \$0. If the procurement data is not readily accessible, you may leave the category blank,” in order to provide report submitters clarification on the difference between having spent \$0 on procurement and being unsure if whether or not there was procurement. It allows the system to tell HCAI that there is a difference between the two different entries.

In subsection (b) (14) and (15), we omitted the “Tier II Total Minority Business Enterprises” and “Combined Total Minority Business Enterprises” sentences because it was a typographical error. It was a repetitive sentence that preceded the following indented paragraph.

In subsection (b) (16), we provided further clarification that the hospital must submit their spent on procurement in total “during the reporting period (prior calendar year).” This was necessary to clarify because report submitters should only submit the information in the reporting period to remain consistent.

Throughout Section 95002, it was clarified that the standards for the “to the extent the information is accessible,” should be “determined by each hospital.”

Throughout Section 95002, for consistency purposes, “to the extent the information was available” was changed to “to the extent the information was accessible” to match the language written in the statute.

95003 System/Regional-Level Hospital Supplier Diversity Report (optional)

Subsection (c) (3) “Report Period Start Date,” we added “January 1 of prior calendar year” to clarify that the reporting period should begin with the prior calendar year.

Subsection (c) (4) “Report period End Date,” we added “December 31 of prior calendar year” to clarify that the reporting period should end with the prior calendar year.

In subsection (c) (5) and (6), we have added, “If \$0 were spent on procurement for a category, you may enter \$0. If the procurement data is not readily accessible, you may leave the category blank,” in order to provide report submitters clarification on the difference between having spent \$0 on procurement and being unsure if whether or not there was procurement. It allows the system to tell HCAI that there is a difference between the two different entries.

In subsection (c) (6) and (7), we omitted the “Tier II Total Minority Business Enterprises” and “Combined Total Minority Business Enterprises” sentences because it was a typographical error. It was a repetitive sentence that preceded the following indented paragraph.

In subsection (b) (8), we provided further clarification that the hospital must submit their spent on procurement in total “during the reporting period (prior calendar year).” This was necessary to clarify because report submitters should only submit the information in the reporting period to remain consistent.

Throughout Section 95003, it was clarified that the standards for the “to the extent the information is accessible,” should be “determined by each hospital.” In addition, throughout this Section, “hospital system/regional network” for clarification. It is important to have distinctive language that separates the system/regional network report and the individual-level report.

Throughout Section 95003, for consistency purposes, “to the extent the information was available” was changed to “to the extent the information was accessible” to match the language written in the statute.

Section 95007

In subsection (b), there was a typographical error, which was originally written as “Department, on an annual basis, shall determine a maximum civil penalty of *no less than* thirty-six thousand, five hundred dollars (\$36,500) for failure to file a required report.” We clarified that the “Department, on an annual basis, shall determine a maximum civil penalty of *no more than* thirty-six thousand, five hundred dollars (\$36,500) for failure to file a required report.” The original intent was to collect *no more than* the amount listed above.

Sections 95011-95014

In these sections, we highlight the prehearing provisions, conduct hearings, settlement, and decisions. We adopted these sections from other regulatory packages associated with several of HCAI’s reporting programs and mirrored them for consistency. Thus far, we have been successful in these hearing procedures given the methodologies listed.

DOCUMENTS RELIED UPON

There are documents that the Department has relied upon to assist them with the rulemaking process. The Format and File Specifications for Submission of Hospital Supplier Diversity Reports Version 1.0 was in the original rulemaking file.

The document added to the rulemaking file is called the General Order 156 – California Public Utilities Commission. This document assisted us with drafting definitions to ensure consistency throughout different supplier diversity programs.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the Notice of Modification to Text of Proposed Regulations, the Initial Statement of Reasons, Initial Statement of Reasons Addendum, the text of the modified proposed regulations, the Format and File Specifications for Submission of Hospital Supplier Diversity Reports Version 1.0, and the General Order 156 – California Public Utilities Commission can be accessed through the HCAI website at <http://www.hcai.ca.gov/Laws-Regs.html>.

PROPOSED REGULATIONS

CALIFORNIA CODE OF REGULATIONS

Title 22, Division 7, Chapter 8. ~~Clinic Renovation (Construction) Grant and Loan Program [Repealed]~~ Hospital Community Reports (New Chapter 8 is Added)

Article 1. Hospital Supplier Diversity Reporting

§ 95000 Definitions

For the purposes of this chapter, the following definitions apply:

- (a) "Director" means the Director of the Department of Health Care Access and Information, as described in Health and Safety Code section 127005.
- (b) "Department" means the Department of Health Care Access and Information.
- (c) "Operating expenses" means total patient-related operating expenses for the most recent fiscal year reported to the Department on the Hospital Annual Financial Disclosure Report CHC 7041 d-1, column 1, line 200, submitted as specified in Title 22, California Code of Regulations, Section 97040.
- (d) "Disabled Veteran Business Enterprise" has the same meaning as defined in subparagraph (A) of paragraph (7) of subdivision (b) of Section 999 of the Military and Veterans Code or any successor provision. Disabled veteran business enterprise certification eligibility requirements shall be consistent with the requirements imposed by the Department of General Services, and this chapter shall only apply to a disabled veteran business enterprise certified by the Department of General Services.
- (e) "LGBT business enterprise" means (1) a business enterprise (a) that is at least 51 percent owned by a lesbian, gay, bisexual, or transgender person or persons or (b) if a publicly owned business, at least 51 percent 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.
- (f) "Minority business enterprise" means (1) a business enterprise (a) that is at least 51 percent owned by a minority individual or group(s) or (b) that is, if a publicly owned business, physically located in the United States or its trust territories, at least 51 percent 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 hospital shall presume that minority includes, but is not limited to, African Americans, Hispanic Americans, Native Americans, and Asian Pacific Americans. ~~and other groups.~~
 - (1) African Americans: Black Americans-persons having origins in any black racial groups of Africa.
 - (2) Hispanic Americans: Hispanic Americans-all persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.
 - (3) Native Americans: Native Americans-persons having origin in any of the original peoples of North America or the Hawaiian Islands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.
 - (4) Asian Pacific Americans: Asian Pacific Americans-persons having origins 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.
- (g) "Women business enterprise" means a business enterprise physically located in the United States or its trust territories, that is at least 51 percent owned by a woman or women, or, in the case of any publicly owned business at least 51 percent of the stock of which is owned by one or more women.

- (h) "WMDVLGBTBE" means a women-owned, minority-owned, disabled veteran-owned and/or LGBT-owned business enterprise.
- (i) "Procurement" means the purchase or lease of supplies, services, equipment, and capital expenditures related to buildings and fixed equipment during the previous calendar year. Procurement does not include items such as employee salaries and wages, fixed asset depreciation, amortization, or taxes.
- (j) "Tier I procurement" means the procurement by direct contract between a hospital and a supplier directly to provide goods and services that support the operations of the hospital.
- (k) "Tier II procurement" means procurement by any agreement or arrangement between a contractor and any third party.
- (l) "Hospital" means any facility that is required to be licensed under subdivision (a), (b), or (f) of Health and Safety Code section 1250, with operating expenses of fifty million dollars (\$50,000,000) or more, and each licensed hospital with operating expenses of twenty-five million dollars (\$25,000,000) or more that is part of either a hospital system or regional network.
- (m) "Hospital system/regional network" means two or more hospitals owned, sponsored, or managed by the same organization.

Note: ~~Authority cited: Section 11152, Government Code.~~ Section 127010, Health and Safety Code. Reference: Sections 1339.86 and 1339.87, Health and Safety Code

§ 95001 Contact Registration

- (a) Each hospital or hospital system/regional network must designate a primary contact person and must register with the Department for the purpose of receiving advanced notice of report due dates and to submit the required report.
- (b) A primary contact person must register on the Department's website using the registration portal at <https://hcai.ca.gov/data-and-reports/cost-transparency/hospital-supplier-diversity/>. A contact person must provide the following information:
 - (1) The legal name of the hospital or hospital system.
 - (2) The name of a contact person designated to receive notices.
 - (3) The business title of the designated contact person.
 - (4) A business address.
 - (5) A business email address.
 - (6) A business phone number.
- (c) Each ~~health facility~~ hospital shall update, through the online portal, within 15 days after any change in the person designated as the primary contact person, or in the primary contact person's name, mailing address, business phone number, or email address.

Note: ~~Authority cited: Section 11152, Government Code.~~ Section 127010, Health and Safety Code. Reference: Sections 1339.86 and 1339.87, Health and Safety Code

§ 95002 Individual Hospital Supplier Diversity Report

- (a) A hospital as defined in Section 95000 shall file a report with the Department.
- (b) Data elements for individual hospital-level reports shall include:
 - (1) Hospital name

- (2) Hospital HCAI ID
- (3) Reporting organization
- (4) Report period start date [January 1 of prior calendar year]
- (5) Report period end date [December 31 of prior calendar year]
- (6) The hospital's Supplier Diversity Policy Statement
- (7) The hospital's outreach and communications to WMDVLGBTE enterprises.
- (8) Does the hospital require certification?
- (9) Does the hospital accept self-certification?
- (10) Other relevant information.
- (11) The hospital's outreach and communications to WMDVLGBTE to become potential suppliers, including:
 - (A) How the hospital encourages and seeks out WMDVLGBTE to become potential suppliers.
 - (B) How the hospital encourages its employees involved in procurement to seek out WMDVLGBTE to become potential suppliers.
 - (C) How the hospital conducts outreach and communication to WMDVLGBTE.
- (12) How the hospital supports organizations that promote or certify WMDVLGBTE.
- (13) The hospital's Tier I procurements that are made from WMDVLGBTE with at least a majority of the enterprise's workforce in California, with each category aggregated separately, to the extent that information is readily accessible, as determined by each hospital. For the purpose of this requirement, reports shall include total dollar amount for each category, to the extent that information is readily accessible, as determined by each hospital. If \$0 were spent on procurement for a category, you may enter \$0. If the procurement data is not readily accessible, you may leave the category blank.
 - (A) Tier I Total Minority Business Enterprises
 - (B) Tier I African American Business Enterprise
 - (C) Tier I Hispanic American Business Enterprise
 - (D) Tier I Native American Business Enterprise
 - (E) Tier I Asian Pacific American Business Enterprise
 - (F) Tier I Unknown Minority Business Enterprise (if unable to identify which qualified minority category).
 - (G) Tier I Women Business Enterprises
 - (H) Tier I LGBT Business Enterprises
 - (I) Tier I Disabled Veteran Business Enterprises
 - (J) Tier I Less duplicated amount (if amounts have been included in multiple categories, enter the duplicated amounts and subtract it when calculating the combined total).
 - (K) Combined Tier I total
- (14) The hospital's Tier II procurements that are made from WMDVLGBTE with at least a majority of the enterprise's workforce in California, with each category aggregated separately, to the extent that information is readily accessible, as determined by each hospital. For the purpose of this requirement, reports shall include total dollar amount for each category, to the extent that information is readily available-accessible, as determined by each hospital. If \$0 were spent on procurement for a category, you may enter \$0. If the procurement data is not readily accessible, you may leave the category blank. ~~Tier II Total Minority Business Enterprises~~
 - (A) Tier II Total Minority Business Enterprise
 - (B) Tier II African American Business Enterprise
 - (C) Tier II Hispanic American Business Enterprise

- (D) Tier II Native American Business Enterprise
- (E) Tier II Asian Pacific American Business Enterprise
- (F) Tier II Unknown Minority Business Enterprise (if unable to identify which qualified minority category).
- (G) Tier II Women Business Enterprises
- (H) Tier II LGBT Business Enterprises
- (I) Tier II Disabled Veteran Business Enterprises
- (J) Tier II Less duplicated amount (if amounts have been included in multiple categories, enter the duplicated amounts and subtract it when calculating the combined total).
- (K) Combined Tier II total
- (15) The hospital's combined Tier I and Tier II procurements that are made from WMDVLGBTE with at least a majority of the enterprise's workforce in California, with each category aggregated separately, to the extent that information is readily accessible, as determined by each hospital. For the purpose of this requirement, reports shall include total dollar amount for each category, to the extent that information is readily ~~available-accessible~~, as determined by each hospital. If \$0 were spent on procurement for a category, you may enter \$0. If the procurement data is not readily accessible, you may leave the category blank. ~~Combined Total Minority Business Enterprises~~
 - (A) Combined Total Minority Business Enterprise
 - (B) Combined African American Business Enterprise
 - (C) Combined Hispanic American Business Enterprise
 - (D) Combined Native American Business Enterprise
 - (E) Combined Asian Pacific American Business Enterprise
 - (F) Combined Unknown Minority Business Enterprise (if unable to identify which qualified minority category)
 - (G) Combined Women Business Enterprises
 - (H) Combined LGBT Business Enterprises
 - (I) Combined Disabled Veteran Business Enterprises
 - (J) Combined Less duplicated amount (if amounts have been included in multiple categories, enter the duplicated amounts and subtract it when calculating the combined total).
 - (K) Combined Tier I and Tier II total
- (16) How much your hospital has spent on procurement in total during the reporting period (prior calendar year).
- (17) Indicate if your hospital also has procurement through a hospital system or regional network within a hospital system, which was reported by the health system.
 - (A) If yes, please list the entity(s) this procurement is reported by.
- (18) Information regarding appropriate contacts at the hospital for interested business enterprises. Include relevant information as it pertains to your facility.
 - (A) Name of contact person(s) who will be involved with hospital procurement.
 - (B) Email of contact person(s) or general email where hospital procurement questions/inquiries may be answered.
 - (C) Phone number of contact person(s) or general phone number where hospital procurement questions/inquiries may be answered.
 - (D) Website for hospital procurement where information, instructions, requirements, and/or other information will be available.
 - (E) Third party procurement organization information.
 - (F) Other helpful website links.
 - (G) Other relevant information.

Note: ~~Authority cited: Section 11152, Government Code.~~ Section 127010, Health and Safety Code. Reference: Sections 1339.86 and 1339.87, Health and Safety Code

§ 95003 System/Regional-Level Hospital Supplier Diversity Report (optional)

- (a) A hospital that is part of a hospital system or is organized within a regional network within a hospital system may report the diversity of its procurement in compliance with this subparagraph from a systemwide or regional network level if there are suppliers that provide services or goods to all hospitals within the hospital system or regional network. A hospital shall report the diversity of the remainder of its procurement, including the suppliers that do not resource the entire hospital system or regional network, as an individual hospital.
- (1) When submitting a system/regional-level report, the report will only apply to the procurements purchased at a system/regional-level. A hospital system may use diverse suppliers for the hospitals within their own networks that would apply in this report.
 - (2) Individual hospital-level reports will highlight procurement data purchased on an individual level.
- (b) The system/regional-level report is optional to submit in addition to the individual report, not as a substitution. The individual hospital, as defined above, must be submitted.
- (c) A hospital that is part of a hospital system or is organized within a regional network within a hospital system may report the diversity of its procurement from a systemwide or regional network level if there are suppliers that provide services or goods to all hospitals within the hospital system or regional network. Data elements for system/regional-level reports include:
- (1) Reporting organization
 - (2) System or regional network description
 - (3) Report period start date [January 1 of prior calendar year]
 - (4) Report period end date [December 31 of prior calendar year]
 - (5) The hospital system or regional network Tier I procurements that are made from WMDVLGBTE with at least a majority of the enterprise's workforce in California, with each category aggregated separately, to the extent that information is readily accessible, as determined by each hospital system/regional network. For the purpose of this requirement, reports shall include total dollar amount for each category, to the extent that information is readily ~~available~~ accessible, as determined by each hospital system/regional network. If \$0 were spent on procurement for a category, you may enter \$0. If the procurement data is not readily accessible, you may leave the category blank.
- (A) Tier I Total Minority Business Enterprises
 - (B) Tier I African American Business Enterprise
 - (C) Tier I Hispanic American Business Enterprise
 - (D) Tier I Native American Business Enterprise
 - (E) Tier I Asian Pacific American Business Enterprise
 - (F) Tier I Unknown Minority Business Enterprise (if unable to identify which qualified minority category).
 - (G) Tier I Women Business Enterprises
 - (H) Tier I LGBT Business Enterprises
 - (I) Tier I Disabled Veteran Business Enterprises
 - (J) Tier I Less duplicated amount (if amounts have been included in multiple categories, enter the duplicated amounts and subtract it when calculating the combined total).
 - (K) Combined Tier I total

- (6) The hospital system or regional network Tier II procurements that are made from WMDVLGBTE with at least a majority of the enterprise's workforce in California, with each category aggregated separately, to the extent that information is readily accessible, as determined by each hospital system/regional network. For the purpose of this requirement, reports shall include total dollar amount for each category, to the extent that information is readily ~~available~~ accessible, as determined by each hospital system/regional network. If \$0 were spent on procurement for a category, you may enter \$0. If the procurement data is not readily accessible, you may leave the category blank. ~~Tier II Total Minority Business Enterprises~~
- (A) Tier II Total Minority Business Enterprise
 - (B) Tier II African American Business Enterprise
 - (C) Tier II Hispanic American Business Enterprise
 - (D) Tier II Native American Business Enterprise
 - (E) Tier II Asian Pacific American Business Enterprise
 - (F) Tier II Unknown Minority Business Enterprise (if unable to identify which qualified minority category).
 - (G) Tier II Women Business Enterprises
 - (H) Tier II LGBT Business Enterprises
 - (I) Tier II Disabled Veteran Business Enterprises
 - (J) Tier II Less duplicated amount (if amounts have been included in multiple categories, enter the duplicated amounts and subtract it when calculating the combined total).
 - (K) Combined Tier II total
- (7) The hospital system or regional network combined Tier I and Tier II procurements that are made from WMDVLGBTE with at least a majority of the enterprise's workforce in California, with each category aggregated separately, to the extent that information is readily accessible, as determined by each hospital system/regional network. For the purpose of this requirement, reports shall include total dollar amount for each category, to the extent that information is readily ~~available-accessible~~, as determined by each hospital system/regional network. Combined
~~Total Minority Business Enterprises~~
- (A) Combined Total Minority Business Enterprise
 - (B) Combined African American
 - (C) Combined Hispanic American
 - (D) Combined Native American
 - (E) Combined Asian Pacific American
 - (F) Combined Unknown Minority (if unable to identify which qualified minority category)
 - (G) Combined Women Business Enterprises
 - (H) Combined LGBT Business Enterprises
 - (I) Combined Disabled Veteran Business Enterprises
 - (J) Combined Less duplicated amount (if amounts have been included in multiple categories, enter the duplicated amounts and subtract it when calculating the combined total).
 - (K) Combined Tier I and Tier II total
- (8) How much your hospital system/regional network has spent on procurement in total during the reporting period (prior calendar year)?
- (9) Does the hospital system/regional network require certification?
- (10) Does the hospital system/regional network accept self-certification?
- (11) Other relevant information.

Note: ~~Authority cited: Section 11152, Government Code.~~ Section 127010, Health and Safety Code. Reference: Sections 1339.86 and 1339.87, Health and Safety Code.

§ 95004 Report Due Dates

- (a) Each hospital shall annually update its supplier diversity report and submit the new report to the office no later than July 1 of that year.

Note: ~~Authority cited: Section 11152, Government Code.~~ Section 127010, Health and Safety Code. Reference: Sections 1339.86 and 1339.87, Health and Safety Code

§ 95005 Extension Request

- (a) A hospital may request, and the Department may grant, a 30-day extension to file the report if needed due to unintended or unforeseen delays.
- (b) The registered contact person(s) of the hospital may file with the Department a request for an extension of time to file for this required report. A request for extension shall be filed on or before the required due date, prescribed in Section 95004, by using the extension request screen available through the Department's website using the report submission portal at <https://hcai.ca.gov/data-and-reports/cost-transparency/hospital-supplier-diversity/>. Notices regarding the use of extension days, and new due dates, as well as notices of approval and rejection, will be e-mailed to the registered contact person(s) provided.
- (c) The Department shall respond to an extension request with an email confirmation to the requestor that their 30-day extension has been granted.

Note: ~~Authority cited: Section 11152, Government Code.~~ Section 127010, Health and Safety Code. Reference: Sections 1339.86 and 1339.87, Health and Safety Code

§ 95006 Method of Submission

- (a) A report required under Section 95002 shall be submitted to the Department through the Department's website using the report submission portal at <https://hcai.ca.gov/data-and-reports/cost-transparency/hospital-supplier-diversity/>.
- (b) Reports must be submitted using one of the following methods:
 - (1) Uploading comma separated value (.csv) files including all of the required information for one or more reports. Such files shall comply with the Department's Format and File Specifications for Submission of Hospital Supplier Diversity Reports Version 1.0, dated December 31, 2021, and hereby incorporated by reference; or
 - (2) Entering the required information for reports online.

Note: ~~Authority cited: Section 11152, Government Code.~~ Section 127010, Health and Safety Code. Reference: Sections 1339.86 and 1339.87, Health and Safety Code

§ 95007 Penalties for Late Filing of Reports

- (a) A hospital that fails to file a required report by the due date established by Section 95004 is liable for a civil penalty of one hundred dollars (\$100) for each day after the due date that the required report is not filed.
- (b) If the report is delinquent at the time the next report is due, the Department, on an annual basis, shall determine a maximum civil penalty of no ~~less~~ more than thirty-six thousand, five hundred dollars (\$36,500) for failure to file a required report.

Note: Authority cited: ~~Authority cited: Section 11152, Government Code~~ Section 127010, Health and Safety Code and Section 1339.87, Health and Safety Code. Reference: Section 1339.87, Health and Safety Code.

§ 95008 Penalty Assessment

- (a) When a report required by Section 95002 is filed after the due date specified in Section 95004, the Department will notify the hospital of the accrued penalty. The notice shall be provided by email to the authorized individual identified by the hospital under subdivision (b)(2) of Section 95001.
- (b) The Department will calculate the accrued penalty pursuant to Section 95007.

Note: Authority cited: ~~Authority cited: Section 11152, Government Code~~ Section 127010, Health and Safety Code and Section 1339.87, Health and Safety Code. Reference: Section 1339.87, Health and Safety Code.

§ 95009 Filing an Appeal

- (a) A hospital that has received notice of an accrued penalty under Section 95008 may appeal the penalty assessment by filing, as explained in Section 95010, a written request for hearing no later than 30 days from the date of the notice. The request shall be filed with the Department's hearing officer.
- (b) The request for hearing shall include the following:
 - (1) The name of the hospital.
 - (2) The name of the authorized representative of the hospital and contact information for that representative.
 - (3) The date of the penalty assessment notice.
 - (4) A statement of the basis for the appeal.
 - (5) A copy of the penalty notice.

Note: Authority cited: ~~Authority cited: Section 11152, Government Code~~ Section 127010, Health and Safety Code and Section 1339.87, Health and Safety Code. Reference: Section 1339.87, Health and Safety Code.

§ 95010 Hearing Officer Contact Information

(a) Hearing requests and other communications, including requests for consolidation, questions about the hearing schedule or process, and all documents and proposed exhibits, shall be addressed to the hearing officer either by mail or by email as follows:

(1) Mail shall be sent to the hearing officer at the Legal Office of the Department of Health Care Access and Information in Sacramento.

(2) Email shall be sent to the following email address: HearingOfficer@hcai.ca.gov.

Note: Authority cited: ~~Authority cited: Section 11152, Government Code~~ Section 127010, Health and Safety Code and Section 1339.87, Health and Safety Code. Reference: Section 1339.87, Health and Safety Code.

§ 95011 Prehearing Provisions

(a) The hospital and the Department will be notified of the hearing date and time at least 30 calendar days in advance.

(b) The hospital and the Department shall provide copies of all proposed exhibits to the hearing officer and to the other party no later than 10 calendar days prior to the hearing date.

(c) Request to Change Hearing Date. Either party may request a change of hearing date, if necessary. Requests for rescheduling must be submitted to the hearing officer at least 10 business days before the scheduled hearing. Requests for rescheduling must be based upon good cause, as determined by the hearing officer, and will only be granted if the change would not prejudice the other party.

(d) Request to Change Hearing Method. All hearings will be held in Sacramento at the business location of the Department; however, the hearing officer may schedule a hearing to be conducted by telephone or other electronic means. If so, either party may object; upon receipt of such an objection, the hearing officer will schedule an in-person hearing in Sacramento. If the hearing officer does not initially plan to conduct a hearing by telephone or other electronic means, either party may so request; if the hospital and the Office consent, the hearing officer may, but is not required to, conduct the hearing by telephone or other electronic means. The hospital and the Department will be notified of the hearing officer's decision.

(e) Request for Consolidation. The hearing officer may, on their own determination or upon written request of one of the parties, consolidate for hearing or decision any number of appeals when the facts and circumstances are similar and no substantial right of any party will be prejudiced. The hearing officer shall notify both the hospital and the Department if consolidation is occurring. Within five days of receiving the notice of hearing, either party may request consolidation by filing a request with the hearing officer containing the following information:

(1) Identification of the appeals to be consolidated.

(2) A statement of the basis for consolidation.

(f) Request for Interpreter. If a party or a witness of a party does not speak English proficiently, that party may request language assistance and the Department will provide an interpreter.

Such a request must be received by the hearing officer at least 10 business days before the hearing.

(g) Request for Court Reporter. Hearings will be recorded electronically; however, either party may provide a court reporter at that party's expense. If a party chooses to provide a court reporter, that party shall notify the hearing officer in advance and make all necessary arrangements. The original of the transcript shall be provided directly to the Department. The non-appearance of a court reporter will not be considered adequate grounds for cancelling or rescheduling a hearing.

Note: Authority cited: ~~Authority cited: Section 11152, Government Code~~ Section 127010, Health and Safety Code and Section 1339.87, Health and Safety Code. Reference: Section 1339.87, Health and Safety Code.

§ 95012 Conduct of Hearing

(a) The hearing shall be conducted by an employee of the Department appointed by the Director of the Department to serve as hearing officer.

(b) The hearing shall be conducted in person in Sacramento or by telephone or other electronic means as determined by the hearing officer, as specified in Section 95011.

(c) The hearing shall not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs.

(d) All testimony at the hearing shall be taken under oath or affirmation.

(e) The hearing shall be recorded by electronic means unless one party has chosen to provide a court reporter at their own expense as specified in Section 95011. A court reporter shall provide the original of the transcript directly to the hearing officer.

(f) The hearing shall be open to the public.

Note: Authority cited: ~~Authority cited: Section 11152, Government Code~~ Section 127010, Health and Safety Code and Section 1339.87, Health and Safety Code. Reference: Section 1339.87, Health and Safety Code.

§ 95013 Settlement

If a settlement is reached between the parties prior to the hearing, the Department shall notify the hearing officer and no hearing shall be held.

Note: Authority cited: ~~Authority cited: Section 11152, Government Code~~ Section 127010, Health and Safety Code and Section 1339.87, Health and Safety Code. Reference: Section 1339.87, Health and Safety Code.

§ 95014 Decision

(a) The hearing officer shall prepare a recommended decision for the Director of the Department; the recommended decision shall be in writing and shall include findings of fact and conclusions of law.

(b) The Director of the Department may either adopt or reject the proposed decision. If the Director does not adopt the proposed decision as presented, they will independently prepare a decision based upon the hearing record; the Director may adopt factual findings of the hearing officer.

Note: Authority cited: ~~Authority cited: Section 11152, Government Code~~ Section 127010, Health and Safety Code and Section 1339.87, Health and Safety Code. Reference: Section 1339.87, Health and Safety Code.

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH CARE ACCESS AND INFORMATION

FORMAT AND FILE SPECIFICATIONS
FOR SUBMISSION OF
HOSPITAL SUPPLIER DIVERSITY REPORTS

Version 1.0

FORMAT AND FILE SPECIFICATIONS
FOR SUBMISSION OF
HOSPITAL SUPPLIER DIVERSITY REPORTS
GENERAL INFORMATION

This document specifies requirements for electronic files submitted to the Department of Health Care Access and Information (HCAI) in accordance with California Code of Regulations, Title 22, Section 95006. If a hospital chooses to submit the reports specified in Section 95006 by uploading comma separated value (.csv) files, the files must meet the following technical format and file specifications.

All files must begin with a header record with the data element labels as specified below, in .csv format. All of the data element labels must be included in the file.

While each report is not required to include all of the data elements outlined in the specifications below, if a data element is not included, the file must include a blank column, delimited by commas, in its place.

Dates shall be in a numeric format with month, day, and year (four digit) separated by slashes ("/"). For example, 3/12/2021 (also commonly referred to as "m/d/yyyy").

Any currency amounts shall be reported in United States dollars, in numeric format as a whole dollar amount, with no commas or dollar symbols.

An itemization of program/procurement expenses provided will include direct procurement (Tier I) and subcontractor procurement (Tier II).

Any data element which contains a comma within the value must be placed within quotation marks (" "). Alternatively, all alphanumeric fields may be placed within quotation marks, whether they contain a comma within the value or not.

The Department may reject any report that does not comply with these specifications.

FORMAT AND FILE SPECIFICATIONS
FOR SUBMISSION OF
HOSPITAL SUPPLIER DIVERSITY REPORTS
STANDARD RECORD FORMAT

Individual Report

Data Element	Label	Format	Size
Hospital Name	Hospital_Name	Alphanumeric	200
Hospital HCAI ID	HCAI_ID	Numeric	9
Reporting Organization	Reporting_Organization	Alphanumeric	100
Report Period Start Date	Report_Start_Date	Date	10
Report Period End Date	Report_End_Date	Date	10
Supplier Diversity Statement	Supplier_Diversity_Statement	Alphanumeric	5000
Encourage diverse enterprises	Encourage_Suppliers	Alphanumeric	5000
Encourage employees to seek diverse suppliers	Encourage_Employees	Alphanumeric	5000
Conduct outreach and communication	Conduct_Outreach_Comm	Alphanumeric	5000
Support organizations that certify	Certification_Support	Alphanumeric	5000
Require Certification	Require_Certification	Alphanumeric (yes/no)	3
Accept Self-Certification	Self_Certification	Alphanumeric (yes/no)	3
Tier I: African American	Tier_I_African_American	Numeric	12
Tier I: Hispanic American	Tier_I_Hispanic_American	Numeric	12
Tier I: Native American	Tier_I_Native_American	Numeric	12
Tier I: Asian Pacific American	Tier_I_Asian_Pacific_American	Numeric	12
Tier I: Unknown Minority	Tier_I_Unknown_Minority	Numeric	12
Tier I: Women Owned	Tier_I_Women	Numeric	12
Tier I: LGBT Owned	Tier_I_LGBT	Numeric	12
Tier I: Disabled Veteran Owned	Tier_I_Disabled_Veteran	Numeric	12
Tier I: Less Duplicated Amount	Tier_I_Less_Duplicated_Amount	Numeric	12

Data Element	Label	Format	Size
Tier II: African American	Tier_II_African_American	Numeric	12
Tier II: Hispanic American	Tier_II_Hispanic_American	Numeric	12
Tier II: Native American	Tier_II_Native_American	Numeric	12
Tier II: Asian Pacific American	Tier_II_Asian_American	Numeric	12
Tier II: Unknown Minority	Tier_II_Unknown_Minority	Numeric	12
Tier II: Women Owned	Tier_II_Women	Numeric	12
Tier II: LGBT Owned	Tier_II_LGBT	Numeric	12
Tier II: Disabled Veteran Owned	Tier_II_Disabled_Veteran	Numeric	12
Tier II: Less Duplicated Amount	Tier_II_Less_Duplicated_Amount	Numeric	12
Total Hospital Procurement	Total_Hospital_Procurement	Numeric	12
Contact Name	Contact_Name	Alphanumeric	200
Contact Email	Contact_Email	Alphanumeric	200
Contact Phone Number	Contact_Phone_Number	Numeric	10
Website Link	Website_Link	Alphanumeric	200
Third Party Procurement	Third_Party	Alphanumeric (yes/no)	3
Third Party Name	Third_Party_Name	Alphanumeric	200
Third Party Procurement Website	Third_Party_Website	Alphanumeric	200
Other Relevant Info	Other_Relevant_Info	Alphanumeric	5000

System/Regional-Level Report

Data Element	Label	Format	Size
System Reporting Organization	System_Reporting_Organization	Alphanumeric	200
System Description	System_Description	Alphanumeric	5000
System Report Period Start Date	System_Report_Start_Date	Date	10
System Report Period End Date	System_Report_End_Date	Date	10
Require Certification	System_Require_Certification	Alphanumeric (yes/no)	3
Accept Self-Certification	System_Self_Certification	Alphanumeric (yes/no)	3

Data Element	Label	Format	Size
System Tier I African American	System_Tier_I_African_American	Numeric	12
System Tier I Hispanic American	System_Tier_I_Hispanic_American	Numeric	12
System Tier I Native American	System_Tier_I_Native_American	Numeric	12
System Tier I Asian Pacific American	System_Tier_I_Asian_American	Numeric	12
System Tier I Unknown Minority	System_Tier_I_Unknown_Minority	Numeric	12
System Tier I Women Owned	System_Tier_I_Women	Numeric	12
System Tier I LGBT Owned	System_Tier_I_LGBT	Numeric	12
System Tier I Disabled Veteran Owned	System_Tier_I_Disabled_Veteran	Numeric	12
System Tier I Less Duplicated Amount	System_Tier_I_Less_Duplicated_Amount	Numeric	12
System Tier II African American	System_Tier_II_African_American	Numeric	12
System Tier II Hispanic American	System_Tier_II_Hispanic_American	Numeric	12
System Tier II Native American	System_Tier_II_Native_American	Numeric	12
System Tier II Asian Pacific American	System_Tier_II_Asian_American	Numeric	12
System Tier II Unknown Minority	System_Tier_II_Unknown_Minority	Numeric	12
System Tier II Women Owned	System_Tier_II_Women	Numeric	12
System Tier II LGBT Owned	System_Tier_II_LGBT	Numeric	12
System Tier II Disabled Veteran Owned	System_Tier_II_Disabled_Veteran	Numeric	12
System Tier II Less Duplicated Amount	System_Tier_II_Less_Duplicated_Amount	Numeric	12
System Total Procurement	System_Total_Procurement	Numeric	12
Other Relevant Info	System_Other_Relevant_Info	Alphanumeric	5000

STATE OF CALIFORNIA
DEPARTMENT OF HEALTH CARE ACCESS AND INFORMATION

GENERAL ORDER 156
PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

(Current as of June 11, 2015)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RULES GOVERNING THE DEVELOPMENT OF PROGRAMS TO INCREASE PARTICIPATION OF WOMEN, MINORITY, DISABLED VETERAN AND LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) BUSINESS ENTERPRISES IN PROCUREMENT OF CONTRACTS FROM UTILITIES AS REQUIRED BY PUBLIC UTILITIES CODE SECTIONS 8281-8286

Adopted April 27, 1988. Effective May 30, 1988.

Decision (D.) 88-04-057 in R.87-02-026.

**Modified by D.88-09-024, D.89-08-041, D.90-11-053, D.90-12-027,
D.92-06-030, D.95-12-045, D.96-12-081, D.98-11-030, D.03-11-024,
D.05-12-023, D.06-08-031, D.11-05-019 and D.15-06-007.**

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1. GENERAL

1.1. Intent

- 1.1.1. Purpose - These rules implement California Public Utilities Code (Code) sections 8281-8286 which require the Commission to establish a procedure for the electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their commission-regulated subsidiaries and affiliates to submit annual detailed and verifiable plans for increasing women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises' (WMDVLGBTBEs) procurement in all categories.
- 1.1.2. Revisions of Scope - These rules may be revised on the basis of experience gained in their application and/or changes in legislation. Utilities and other interested parties may individually or collectively file an application with the Commission for the purpose of amending these rules. Any such application shall clearly set forth the changes proposed and the supporting rationale.
- 1.1.3. Relief for Hardship - In cases where the application of any of these rules results in undue hardship or unreasonable expense to a utility, the utility may request relief by filing an application in accordance with the Commission's Rules of Practice and Procedure. Where the relief requested is of minor importance or temporary in nature, the utility may apply for such relief through an advice letter filing. Any advice letter filing must, at a minimum, be served on all parties on the service list of this proceeding.

1.2. Applicability

These rules apply to all electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their commission-regulated subsidiaries and affiliates.

1.3. Definitions

- 1.3.1. "Commission" means the California Public Utilities Commission as provided for in Article XII of the California Constitution.
- 1.3.2. "Women-owned business" 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.
- 1.3.3. "Minority-owned business" 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 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.
- 1.3.4. "LGBT-owned business" 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.
- 1.3.5. "WMLGBTBE" means a women-owned, minority-owned and/or LGBT-owned business enterprise. Under these rules, a woman, a minority and/or an LGBT person owning such an enterprise must be either U.S. citizens or legal

aliens with permanent residence status in the United States.

- 1.3.6. 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.
- 1.3.7. Disabled veteran-owned business enterprise is defined in detail in Section 4 of this General Order.
- 1.3.8. "WMDVLGBTBE" means a women-owned, minority-owned, disabled veteran-owned and/or LGBT-owned business enterprise.
- 1.3.9. African American person, for purposes of this General Order, refers to a person having origins in any black racial groups of Africa.
- 1.3.10. Hispanic American person, for purposes of this General Order, 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, for purposes of this General Order, 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, for purposes of this General Order, 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, or individuals, found to be disadvantaged by the Small Business Administration pursuant to Section 8(a) of Small Business Act as amended (15 U.S.C. 637 (a)), or the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.
- 1.3.14. "Control" means exercising the power to make policy decisions.
- 1.3.15. 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" 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" 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 WMDVLGBTBEs capable of supplying those products or services.
- 1.3.18. "Short-term goal" means a goal applicable to a period of one (1) year.
- 1.3.19. "Mid-term goal" means a goal applicable to a period of three (3) years.
- 1.3.20. "Long-term goal" means a goal applicable to a period of five (5) years.
- 1.3.21. "Utility" means all electrical, gas, water, wireless telecommunications service provider, and telephone corporation with gross annual revenues exceeding twenty-five million dollars (\$25,000,000) and their commission-regulated subsidiaries and affiliates.
- 1.3.22. The "Clearinghouse" means a Commission-supervised program that shall conduct WMLGBTBE verifications and maintain a database of WMDVLGBTBEs for the use of utilities and the Commission.
- 1.3.23. "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):

- 1.3.23.1. 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
- 1.3.23.2. 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" 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.

2. VERIFICATION

The following rules and guidelines shall be used to verify the eligibility of women-owned, minority-owned and LGBT-owned business enterprises (WMLGBTBEs) for participation in utility WMDVLGBTBE procurement programs.

- 2.1. The Clearinghouse described in Section 3 of this General Order shall supply a verification form to applicants. An applicant may complete the verification forms and return them to the Clearinghouse for processing and inclusion in the database. For an applicant for LGBT-owned business enterprise (LGBTBE) status, the Clearinghouse shall also comply with additional rules applicable to LGBTBEs set forth in Section 5 of this General Order and conduct verifications/certifications and renewals/recertifications of LGBTBEs in compliance with the directives set forth in D.15-06-007.
- 2.2. In assessing the suitability of a WMDVLGBTBE to bid for procurement contracts, a utility 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, bonding limits, and so on. A utility may not, however, require such additional information in order to verify that a business is in fact a WMDVLGBTBE.
- 2.3. WMLGBTBEs shall be required to submit verification forms at least once every three years.
- 2.4. Completion of the verification application only initiates a verification of the business's WMLGBTBE status. Filing of an application does not guarantee verification.
- 2.5. The fact that a verified WMDVLGBTBE is included in the Clearinghouse database shall neither be construed as an endorsement of its ability to perform nor shall such inclusion guarantee its business with the utilities.
- 2.6. WMLGBTBE verification forms shall be available for inspection by the Commission.
- 2.7. Falsification of information on the verification form is subject to the penalties provided by Public Utilities Code section 8285.

3. CLEARINGHOUSE

The Commission shall provide a clearinghouse for the sharing of WMDVLGBTBE identification and verification information.

- 3.1. 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, Public Utilities Code sections 8281-8286, and other applicable legal requirements.

- 3.2. The primary purpose of the Clearinghouse shall be to audit and verify the status of WMLGBTBEs, and to establish and maintain a database of WMDVLGBTBEs that is accessible to the Commission and to participating utilities.
- 3.3. The Clearinghouse auditing and verification program shall preclude the need for an individual utility to audit and verify the status of the WMLGBTBEs it does business with.
- 3.4. The Clearinghouse shall distribute renewal verification forms to the WMLGBTBEs at least once every three years. If the renewal is not completed and returned within a reasonable time, the Clearinghouse shall notify the WMLGBTBE and utilities that the WMLGBTBE will not be listed as a verified WMLGBTBE in the shared database until the renewal is completed.
- 3.5. The Clearinghouse shall post on its internet site a calendar of utility procurement-related information sharing and educational events and activities scheduled by utilities in furtherance of legislative policy and this General Order, and may post additional information, or links to information, regarding procurement and/or educational opportunities.
- 3.6. In addition to the Clearinghouse, the Commission may approve third party agencies to perform verifications of WMLGBTBEs. 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 WMLGBTBE that already has a certification through an approved third party agency.² Once the Commission has approved applicable third party agency(ies), WMLGBTBE may choose between the options of either going directly to the Clearinghouse for verification or through an approved third party agency, followed by a streamlined comparable agency verification process with the Clearinghouse. If a WMLGBTBE already has a certification through an approved third party agency, they should apply to the Clearinghouse through a streamlined comparable agency verification process.

² See *e.g.* D.06-08-031, and Resolution Exec. 001, dated July 9, 2009.

- 3.7. The following shall be the process for any verifying agency seeking to become a comparable verifying agency under this General Order:
 - (a) The requesting agency shall submit a detailed written request (Request) to the Commission's GO 156 Staff;
 - (b) The written Request shall include a detailed explanation showing that the requesting 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 completed written Request; and

- (d) Upon review of the Request by GO 156 Staff and the Commission's consideration GO 156 Staff's Recommendation, if the Request is approved, the Commission will issue a resolution granting the requesting agency its comparable verifying agency status.

4. DISABLED VETERANS

The following rules and guidelines shall apply to service disabled veteran business enterprises (DVBE). "Disabled veteran" is defined in Section 1.3.6 of this General Order.

- 4.1. "Disabled veteran-owned business enterprise" means a business enterprise certified by the California Department of General Services as meeting all of the following requirements.
- 4.1.1. 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.
 - 4.1.2. 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.
 - 4.1.3. 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 firm, or other foreign-based business.

- 4.2. Pursuant to Public Utilities Code section 8283(e)(2), DVBEs are verified/certified by the California State Department of General Services, Office of Small Business and Disabled Veterans Business Enterprise Services, and the Clearinghouse shall accept the verifications/certifications by the DGS as though the firm has been certified by the Clearinghouse and to include such DVBE firm in the Clearinghouse's database of the verified/certified WMDVBE firms.
- 4.3. In order to qualify as a DVBE, businesses must meet the criteria in Section 4.1 and must present a current certificate from the California State Department of General Services verifying that such criteria have been met.

5. LESBIAN, GAY, BISEXUAL AND/OR TRANSGENDER³

The following additional rules and guidelines shall apply to LGBT-owned business enterprises (LGBTBEs).

- 5.1. By or before September 1, 2015, the Clearinghouse shall begin maintaining the database associated with the LGBTBEs for purposes of the Utilities' Supplier Diversity Program under this General Order.
- 5.2. By or before September 1, 2015, the Clearinghouse shall develop and implement verification/certification and renewal/recertification processes for the LGBTBEs that comply with D.15-06-007 and this General Order.
- 5.3. A business enterprise seeking verification/certification or renewal/recertification of its LGBTBE status may seek verification/certification or renewal/recertification through the Clearinghouse process, as soon as it is developed and implemented pursuant to D.15-06-007 and this General Order.

³ Former Section 5 has been deleted per D.98-11-030.

6. UTILITY IMPLEMENTATION

Each utility's WMDVLGBTBE program shall be designed to ensure that WMDVLGBTBEs are

encouraged to become potential suppliers of products and services to the utilities subject to GO 156. Nothing in GO 156 authorizes or permits a utility to utilize set-asides, preferences, or quotas in administration of its WMDVLGBTBE program. The utility retains its authority to use its legitimate business judgment to select the supplier for a particular contract.

6.1. Internal Utility Program Development

Each utility shall maintain an appropriately sized staff to provide overall WMDVLGBTBE program direction and guidance and to implement WMDVLGBTBE program requirements.

6.1.1. Each utility shall ensure that its employees with procurement responsibilities receive training in the implementation of its WMDVLGBTBE program.

6.2. External Outreach

Each utility shall implement an outreach program to inform and recruit WMDVLGBTBEs to apply for procurement contracts.

6.2.1. Outreach activities may vary for each utility depending on its size, service territory, and specific lines of business. However, each utility shall at a minimum:

- (1) Actively seek out opportunities to identify WMDVLGBTBE contractors and to expand WMDVLGBTBE source pools;
- (2) Actively support the efforts of organizations experienced in the field who promote the interests of WMDVLGBTBE contractors;
- (3) Work with WMDVLGBTBE contractors to facilitate contracting relationships by explaining utility 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 WMDVLGBTBE bidder, provide information concerning the relative range/ranking of the WMDVLGBTBE contractor's 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 WMDVLGBTBE contractors lists of utility 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 WMDVLGBTBEs;
- (7) Summarize this General Order in its outreach program handouts. Such summaries shall state that WMDVLGBTBEs 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 non-WMDVLGBTBEs, upon request.

6.3. Subcontracting Program

Each utility shall establish and maintain a subcontracting program for the purpose of encouraging its prime contractors to utilize WMDVLGBTBE subcontractors.

- 6.3.1. The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's WMDVLGBTBE prime contractor outreach program.
- 6.3.2. 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 WMDVLGBTBE subcontracting opportunities, regardless of value, where appropriate.
- 6.3.3. The subcontracting program need not be applied to the procurement of products manufactured for general consumption, such as paper, pens, and the like.
- 6.3.4. Each utility shall encourage and assist its prime contractors to develop plans to increase the utilization of WMDVLGBTBEs as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMDVLGBTBEs as subcontractors. These plans may be incorporated into the contract between the utility and the prime contractor. The prime contractor may submit periodic reports on its compliance with the plan to the utility.
- 6.3.5. Each utility 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 BY WOMEN, MINORITY, DISABLED VETERAN
AND LGBT PERSON**

- (1) It is the policy of the utility that business enterprises owned by women, minority, disabled veteran and LGBT person shall have the maximum practicable opportunity to participate in the performance of contracts. However, this policy shall not be used to exclude qualified non-WMDVLGBTBEs from participating in utility contracting.
 - (2) The contractor agrees to use his or her best efforts to carry out this policy in the award of subcontracts to the fullest extent consistent with the efficient performance of this contract.
 - (3) The contractor agrees to inform all prospective WMDVLGBTBE subcontractors of their opportunity to request from the Clearinghouse a verification application form and to return the completed form to the Clearinghouse for processing and inclusion in the database.
- 6.3.6. Each utility is encouraged to inform suppliers of products and services that suppliers' good faith efforts to subcontract with WMDVLGBTBEs is a factor that will be considered in the bid evaluation process. A statement to that effect could be included in all appropriate procurement documents.

- 6.3.7. Each utility shall monitor and include in its annual report to the Commission a summary of prime contractor progress in increasing the participation of WMDVLGBTBE subcontractors.
- 6.3.8. Each utility shall include in its annual plan a description of future plans for encouraging both prime contractors and grantees to engage WMDVLGBTBE subcontractors in all procurement categories which provide subcontracting opportunities.
- 6.3.9. Each utility may include awards to verified WMDVLGBTBE subcontractors in its WMLGBTBE results.

7. COMPLAINT PROCESS

- 7.1 Complaints relating to this General Order shall be filed and appealed only pursuant to the procedure set forth in this Section 7. The Commission will not, however, entertain complaints which do not allege violations of any law, Commission rule, order, or decision, or utility tariff resulting from such Commission action, but which instead involve only general contract-related disputes, such as failure to win a contract award.

- 7.2. Complaints Concerning WMLGBTBE Verification Decisions

All complaints concerning a WMLGBTBE verification decision of the Clearinghouse for purposes of this General Order will be governed by the following procedures.

- 7.2.1. Business enterprises whose WMLGBTBE status has been denied by the Clearinghouse, or who have been deverified by the Clearinghouse, may appeal the decision to the Commission after exhausting their remedies under the internal appeal process implemented by the Clearinghouse, a copy of which will be provided by the Clearinghouse upon request by the affected business enterprise.
- 7.2.2. Third parties may file complaints challenging the WMLGBTBE status of businesses whose WMLGBTBE verification is pending, or who have already been verified by the Clearinghouse. Such complaints must: 1) be in writing and be addressed 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 complainant; and 4) be served on the affected WMLGBTBE. Such complaints may include supporting documentation.

The Clearinghouse will review third party complaints to determine whether there appears to be a factual basis for questioning the challenged party's WMLGBTBE status. If the Clearinghouse determines that there appears to be an insufficient factual basis for the complaint, it shall (a) inform the complainant and affected WMLGBTBE of this determination in writing within 20 business days of the receipt of the complaint and (b) inform the complainant of its right to appeal this determination to the Commission.

- 7.2.3. If the Clearinghouse determines that there appears to be a sufficient factual basis for questioning the challenged party's WMLGBTBE status, it shall require the challenged party to provide the Clearinghouse information sufficient to permit the evaluation of its WMLGBTBE status. Following a thorough review and

evaluation of the information presented by both parties, and an opportunity for each party to respond to the Clearinghouse's proposed resolution of the verification challenge, the Clearinghouse shall notify the parties of its final verification decision and of their right to appeal this decision to the Commission.⁴

- 7.2.4. During the pendency of a third party challenge of a verified WMLGBTBE, the presumption that the challenged party is a WMLGBTBE will remain in effect.
- 7.2.5. If a third party complaint does not include the minimum criteria set forth above, or if the third party rescinds its complaint, the Clearinghouse may review the complaint to determine whether it merits unilateral consideration by the Clearinghouse.

7.3. Commission Review of WMLGBTBE Verification Complaints⁵

- 7.3.1. The complainant, within 20 days after the service of the final decision on the complaint by the Clearinghouse may serve a Notice of Appeal on the Clearinghouse, indicating the grounds for the appeal. The complainant shall also serve the Chief Administrative Law Judge and the appropriate Commission director. The appeal will not be docketed as a formal proceeding.
- 7.3.2. The complainant and the Clearinghouse shall be the only parties to the appeal.
- 7.3.3. The Chief Administrative Law Judge shall designate an Administrative Law Judge to hear the appeal of the complaint.
- 7.3.4. Appeals of complaints will be heard in the Commission's San Francisco or Los Angeles courtrooms as scheduled by the assigned Administrative Law Judge.
- 7.3.5. The Administrative Law Judge shall schedule and notice the appeal for hearing between 10 and 20 days after being assigned to hear the complaint. The Administrative Law Judge may, for good cause shown or upon agreement of the parties, grant a reasonable continuance of the hearing.
- 7.3.6. A party may order a transcript of the hearing, but the party shall pay the cost of the transcript in accordance with the Commission's usual procedures.
- 7.3.7. A party shall be entitled to the services of an interpreter at the Commission's expense upon written request to the assigned Administrative Law Judge no less than three business days prior to the hearing.
- 7.3.8. A party may be represented at the hearing by an attorney or other representative, but such representation will be at the party's sole expense.

⁴ See also Resolution ALJ-299, dated July 2, 2014.

⁵ See *Ibid*.

- 7.3.9. At the hearing, the complainant shall open and close. The Administrative Law Judge may, in his or her discretion, alter the order of presentation. Formal rules of evidence do not apply, and all relevant and reliable evidence may be received in the discretion of the Administrative Law Judge.
- 7.3.10. Ordinarily, the appeal shall be submitted at the close of the hearing. In the Administrative Law Judge's discretion, the record may be kept open for a

reasonable period to permit a party to submit additional evidence or argument.

- 7.3.11. The Administrative Law Judge shall issue an order resolving the appeal no later than 30 days after the appeal is submitted, and the order will be placed on the Commission's first available agenda, consistent with the Commission's applicable rules.
- 7.3.12. From the date the Notice of Appeal is served to and including the date the Commission's final order is mailed, neither party (or an attorney or agent acting in behalf of a party) shall engage in an ex parte communication with a Commissioner, a Commissioner's advisor, or an Administrative Law Judge except for procedural or scheduling purposes.

8. GOALS

Each utility shall set substantial and verifiable short-term (one year), mid-term (three years), and long-term (five years) goals for the utilization of WMLGBTBEs. Goals shall be set annually for each major product and service category which provides opportunities for procurement. "Substantial Goals" mean goals which are realistic and clearly demonstrate a utility's commitment to encourage the participation of WMDVLGBTBEs in utility purchases and contracts.

Each utility shall comply with all general requirements set forth in this section 8.

For the LGBTBEs, additional LGBT-specific requirements are set forth in section 8.3 of this General Order. To the extent that the utilities believe there is/are inconsistency(ies) between general requirements of the utilities under section 8 and LGBTBE requirements specific to LGBTBEs under section 8.3, the utilities are excused from the general requirements of section 8 and shall instead comply with the LGBT-specific requirements of section 8.3. If there is any additional guidance required, the utilities shall confer with the Commission's General Order 156 staff.

- 8.1. The utilities shall consider the following factors in setting their goals:
 - 8.1.1. Total utility purchasing and/or contracting projections;
 - 8.1.2. Availability of WMDVLGBTBEs and competitiveness in the geographical area served by the utility;
 - 8.1.3. Market dynamics based on historical data and trends; and
 - 8.1.4. Other appropriate factors which would increase the WMDVLGBTBEs' share of utility business.
- 8.2. Each utility shall establish initial minimum long-term goals for each major category of products and services the utility purchases from outside vendors of not less than 15% for minority owned business enterprises and not less than 5% for women owned business enterprises. For the purposes of this section, contracts with minority women-owned business enterprises can be counted toward either the minority-owned business enterprise goal or the women-owned business enterprise goal, but not toward both. Similarly, contracts with disabled veteran business enterprises can be counted either as disabled veteran business enterprise procurement or the appropriate women or minority business enterprise goal, but not toward both. The goal for Disabled Veteran Business Enterprise (DVBE) participation in procurement programs of the participating utilities is set at 1.5%, effective January 1, 1997.
- 8.3. In setting the target percentage goal(s) for the LGBTBEs' participation in procurement programs of the participating utilities, we establish a five-year plan, starting the date of the issuance of D.15-06-007, and framework to gather data and experience to set a meaningful target goal for LGBTBE procurement under this General Order. The utilities shall do the following:

- 8.3.1. In 2015, the first year of implementation of the LGBTBEs' inclusion in this General Order 156 Program, the utilities shall focus on integrating Assembly Bill 1678 requirements by identifying the LGBTBEs, services, and areas of need for which there are such qualifying LGBTBEs as well as any and all other effective outreach efforts to build the LGBTBE pool;
- 8.3.2. During the first five years of implementing the LGBTBEs' inclusion in this General Order 156 Program, the Commission should not set any numerically-based goals and targets for LGBTBE procurement;
- 8.3.3. During the first three years of implementing the LGBTBEs' inclusion in the General Order 156 Program, the utilities shall be excused from setting their own numerically-based goals and targets for LGBTBEs and instead focus their efforts on the following foundational and outreach activities:
 - (1) Updating corporate supplier diversity policy to include LGBTBEs and affirming the utilities' commitment to this policy.
 - (2) Establishing a process for recruiting and utilizing LGBTBEs.
 - (3) Integrating LGBTBEs into their corporate talent pool of suppliers.
 - (4) Working with NGLCC, local chapters, and/or any other groups, as appropriate, in developing an enhanced understanding on how to conduct effective outreach to the LGBTBE community for the utilities' procurement and supplier diversity staff.
 - (5) Developing targeted outreach programs for LGBTBEs in order to increase their knowledge and participation in the utilities' supplier diversity program.
 - (6) Monitoring the progress and effectiveness of the utilities' targeted outreach programs for LGBTBEs in order to increase their knowledge and participation in the utilities' supplier diversity program.
 - (7) Ensuring LGBTBEs suppliers are informed of available technical assistance and capacity building programs for enhancing the supplier's business acumen.
 - (8) Working with NGLCC, local chapters, and/or any other groups, as appropriate, to identify areas of the utilities' program where the program is underperforming or underutilized in contracting LGBTBE and continually improving ways to enhance performance and increase the LGBTBE talent pool.
 - (9) Updating processes, procedures and systems to support LGBTBE inclusion in procurement.
- 8.3.4. For the 2016, 2017 and 2018 annual reports and plans, the utilities shall prepare and submit the required detailed annual plans and reports with the proposed short- and long-term goals and timetables required by Section 9 and 10 of this e amended GO 156 and Code section 8283, subsections (a), (b) and (c), and set non-numerically-based targets and goals which track the above outlined activities (outlined above in section 8.3.3.) and report on the related program challenges, accomplishments, timetables and progress towards those non-numerically-based targets and goals.
- 8.3.5. After the first three years and starting annually with the 2019 annual reports and plans, the utilities shall, for LGBTBEs:

- (1) Report on the non-numerically-based targets and goals including reports on the above activities (outlined above in section 8.3.3);
- (2) Establish numerically-based targets and goals for LGBTBE procurement;
- (3) Provide updates to the previously proposed short- and long-term goals and timetables from the prior year's annual report and plan for the LGBTBE procurement; and
- (4) Update those numerically-based targets/goals based on the experience to date, database of qualifying entities and needs of the utilities.

- 8.3.6. By January 1, 2021, the utilities shall hold a public workshop and based thereon file a joint report and recommendation for the Commission's review of whether the Commission should, going forward, set a numerically-based percentage target goal, as appropriate, for LGBTBE procurement and seek relief, if appropriate, from the requirement to annually report on the non-numerically-based targets and goals including reports on the above activities (outlined above in section 8.3.3).
- 8.3.7. The Commission's Supplier Diversity Program staff overseeing the amended General Order 156 program shall continuously monitor the annual reports, plans and Clearinghouse activities, and by January 1, 2021 or as soon as practicable thereafter, present to the Commission, during its 2021 en banc session, a report and a recommendation for setting a meaningful target goal for the utilities' LGBTBE procurement based on the utilities' reports, plans and experiences.
- 8.4. The specification of initial long-term goals in this section shall not prevent the utilities from seeking to reach parity with public agencies, which the Legislature found in Public Utilities Code section 8281(b)(1)(B) are awarding 30% or more of their contracts to WMLGBTBEs.
- 8.5. Goals shall also be established for both minority women-owned business enterprises and non-minority women-owned business enterprises. These goals are to be a subset of the overall goal for WMBEs established by Section 8.2 (initially 20% for both women-owned business enterprises and minority-owned business enterprises). These goals are intended to ensure that utilities do not direct their WMBE procurement programs toward non-minority women- and minority men-owned business enterprises to the detriment or exclusion of minority women-owned business enterprises.

- 8.6. 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" created by a utility pursuant to former Section 8.5.⁶
- 8.7. A utility may no longer create an "excluded category" of products and services for compliance with this General Order. However, for each major category of products and services where the minimum long-term goals required by Section 8.2 are not met, the utility shall include a comprehensive discussion and detailed description of any efforts made to find or recruit WMDVLGBTBE suppliers of products or services in areas where WMDVLGBTBE suppliers are currently the only available procurement method. The utility may also explain in detail in its annual report how its ability to meet its WMDVLGBTBE goals are affected because WMDVLGBTBE's capable of supplying certain products and services are unavailable, or because sole source procurement is the only available procurement method. In this explanatory section, the utility may also include data with exclusions pursuant to former Section 8.5.⁷ If such data is necessary to more fully explain why it has not been able to eliminate exclusions, provided that the utility's report must contain the data without exclusions in the first sentence.
- 8.8. A utility 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 goals for purchases from WMDVLGBTBEs of these categories of products or services, provided that the utility encourages the affiliate to establish an appropriate subcontracting program where such affiliate employs subcontractors. Any utility 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's 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.

⁶ Pursuant to D.03-11-024, the Commission previously revised GO 156 and, in part, added the current modified version of the section 8.7 above. The former Section 8.5, referred above, refers to prior section 8.5 of GO 156, before the Commission adopted D.03-11-024, which 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 is excluded category. Excluded categories must be noted in the utility's annual report to the Commission on WMDVBE program progress and future plans.

⁷ See *supra*, footnote 6.

- 8.9. Goals for each specific product or service category shall be expressed as a percentage of total dollars awarded by a utility to outside vendors in that category; however, where appropriate, non-numeric goals may also be included.
- 8.10. Overall program goals shall be expressed as a percentage of total dollars awarded to outside vendors in all categories of products and services purchased by a utility other than products and services which are included in a fuel procurement base established pursuant to Section 8.11.
- 8.11. Payments to other utilities and franchise tax fees, other taxes and postage need not be included in the standard procurement base used to establish goals.
- 8.12. Each utility may establish a separate fuel procurement base for reporting progress and establishing goals for procurement of fuels from WMDVLGBTBEs. Utilities choosing to report fuel purchases separately from the purchase of other products and services must follow the guidelines set forth below:
 - 8.12.1. 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;
 - 8.12.2. The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic on-shore natural gas markets;
 - 8.12.3. Utilities which purchase from WMDVLGBTBE suppliers 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 to exclude product and services categories for which there are available WMDVLGBTBEs; and
 - 8.12.4. Utilities may exclude purchases of fuel other than domestic onshore natural gas if such fuel qualifies for an exclusion under former Section 8.5⁸ and if the utility plans for and reports on progress in increasing the procurement of such fuels from WMDVLGBTBEs.
- 8.13. Each utility shall make special efforts to increase utilization and encourage entry into the marketplace of WMDVLGBTBEs in product or service categories where there has been low utilization of WMDVLGBTBEs, such as legal and financial services, fuel procurement, and areas that are considered technical in nature.
- 8.14. No penalty shall be imposed for failure of any utility to meet and/or exceed goals.
- 8.15. Utilities shall report their goals in their annual plans.

⁸ *Ibid.*

9. ANNUAL REPORT

Utilities shall serve an electronic copy on the on the Executive Director, by March 1 of each year, an Annual Report on their WMDVLGBTBE Program.

- 9.1. The Annual Report shall contain at least the following elements:

- 9.1.1. A description of WMDVLGBTBE 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.
- 9.1.2. A summary of WMDVLGBTBE purchases and/or contracts, with breakdowns by ethnicity, product and service categories compared with total utility contract dollars awarded to outside vendors in those categories, and with information regarding the total number of WMDVLGBTBEs with contracts, and the dollars awarded to such WMDVLGBTBEs. 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. Each utility shall also report the number of WMDVLGBTBEs that received direct spend during the reporting year.
- 9.1.3. An itemization of WMDVLGBTBE program expenses provided in the format required by Attachment A to D.95-12-045 or in an approved updated format in compliance with D.15-06-007.
- 9.1.4. A description of progress in meeting or exceeding set goals and an explanation of any circumstances that may have caused the utility to fall short of its goals.
- 9.1.5. A summary of prime contractor utilization of WMDVLGBTBE subcontractors.
- 9.1.6. A list of WMDVLGBTBE complaints received during the past year, accompanied by a brief description of the nature of each complaint and its resolution or current status.
- 9.1.7. A description of any efforts made to recruit WMDVLGBTBE suppliers of products or services in procurement categories where WMDVLGBTBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.
- 9.1.8. Utilities shall retain all documents and data they rely on in preparing their WMDVLGBTBE annual report for the longer of either three years or in conformance with the utilities' individual document retention policies, and shall provide these documents and data to the Commission upon request.
- 9.1.9. Utilities shall summarize WMDVLGBTBE purchases and/or contracts in product and service categories that include 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 shall report renewable and nonrenewable energy procurement in a manner similar to their reporting of fuel procurement.
- 9.1.10. The Commission's Division of Water and Audits, shall commence an audit program in 2012 wherein at least one annual GO 156 report will be randomly selected every two years for one industry group and audited to confirm that the most recently reported WMDVLGBTBE spend is accurate. The Audit Division will determine a random selection process and audit methodology to perform the audit, commencing with the energy industry, followed by telecommunications,

then water, in subsequent two-year periods, to be repeated in that order.

9.1.11. Each utility which elects to report fuel procurement separately must file with the Executive Director by March 1 of each year, a separate detailed and verifiable report on WMDVLGBTBE participation in fuel markets. These reports must include, at a minimum, the results of purchases in each fuel category.

(a) Each utility 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 shall provide:

- (1) An explanation of how existing and/or changing market conditions are affecting the utility's ability to meet or exceed its WMDVLGBTBE goals for fuel;
- (2) A comprehensive description of the specific out-reach programs used to seek WMDVLGBTBE fuel suppliers in each market in which fuel is purchased; and
- (3) A justification for any exclusion of a specific fuel category from the utility's fuel procurement base.

9.2. This General Order is not intended to permit erosion of WMDVLGBTBE programs and reporting presently engaged in by a utility.

9.3. Nothing in this General Order shall prohibit any utility 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-owned classifications).

9.4. In the annual reporting of the LGBTBE procurement, the utilities shall comply with all general requirements set forth in this section 9 and the additional LGBT-specific requirements set forth in section 8.3 of this General Order. To the extent that the utilities believe there is/are inconsistency(ies) between general reporting requirement of the utilities under section 9 and reporting requirements specific to LGBTBEs under section 8.3, the utilities are excused from the general requirements of section 9 and shall instead comply with the LGBT-specific requirements of section 8.3. If there is any additional guidance required, the utilities shall confer with the Commission's General Order 156 staff.

10. ANNUAL PLAN

Utilities shall serve an electronic copy of its Annual Plan on the Executive Director, by March 1 of each year, a detailed and verifiable plan for encouraging women, minority, disabled veteran and LGBT business enterprises procurement in all categories.

10.1. The Annual Plan shall contain at least the following elements:

- 10.1.1. Short, mid, and long term goals set as required by Section 8, *supra*;
- 10.1.2. A description of WMDVLGBTBE program activities planned for the next calendar year. This description shall include both internal and external activities;
- 10.1.3. Plans for recruiting WMDVLGBTBE suppliers of products or services where WMDVLGBTBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.
- 10.1.4. Plans for seeking and or recruiting WMDVLGBTBE suppliers of products or services where WMDVLGBTBE suppliers are currently unavailable.
- 10.1.5. Plans for encouraging both prime contractors and grantees to engage WMDVLGBTBEs in subcontracts in all categories which provide subcontracting opportunities.
- 10.1.6. Plans for complying with the WMDVLGBTBE program guidelines established by the Commission as required by Public Utilities Code section 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. In the annual plans for the LGBTBE procurement, the utilities shall comply with all general requirements set forth in this section 10 and the additional LGBT-specific requirements set forth in section 8.3 of this General Order. To the extent that the utilities believe there is/are inconsistency(ies) between general requirement for the utilities under section 10 and LGBT-specific requirements under section 8.3, the utilities shall also refer to section 8.3 of this General Order. To the extent that the utilities believe there is/are inconsistency(ies) between this section's requirement and requirements specific to LGBTBEs under section 8.3, the utilities are excused from the general requirements of section 10 and shall instead comply with the LGBT-specific requirements of section 8.3. If there is any additional guidance required, the utilities shall confer with the Commission's General Order 156 staff.

11. COMMISSION REPORT

The Commission shall provide an annual report to the Legislature beginning in January, 1989, on the progress of activities under-taken by each utility to implement Public Utilities Code sections 8281 through 8286 and this General Order, as required by Section 8283 (e).

- 11.1. In this report, the Commission shall recommend a program for carrying out the policy declared in the above-mentioned sections of the Public Utilities Code, together with recommendations for legislation it deems necessary or desirable to further that policy.
- 11.2. This report shall include recommendations to the utilities for the achievement of maximum results in implementing legislative policy and this General Order.

- 11.3. The Commission shall hold an annual en banc hearing or other proceeding in order to provide utilities and members of the public, including community based organizations, the opportunity to share ideas and make recommendations for effectively implementing legislative policy and this General Order.

Approved and dated June 11, 2015, at San Francisco, California.

PUBLIC UTILITIES COMMISSION STATE OF CALIFORNIA

By Timothy Sullivan, *Acting Executive Director*