ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

RULES GOVERNING THE DEVELOPMENT OF PROGRAMS
TO INCREASE PARTICIPATION OF WOMEN, MINORITY AND
DISABLED VETERAN 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 88-04-057 in R.87-02-026.
Modified by Decisions 88-09-024, 89-08-041, 90-11-053,
90-12-027, 92-06-030,95-12-045, 96-12-081, and 98-11-030, 03-11-024, and 05-12-023.

TABLE OF CONTENTS

1. GENERAL

1.1. Intent

1.1.1. Purpose

1.1.2. Revisions of Scope

1.1.3. Relief for Undue Hardship

1.2. Applicability

1.3. Definition

1.3.1. "Commission"

1.3.2. "Women-owned business"

1.3.3. "Minority-owned business"

1.3.4. "WMBE"

1.3.5. Black Americans

1.3.6. Hispanic Americans

1.3.7. Native Americans

1.3.8. Asian Pacific Americans

1.3.9. Other Groups

1.3.10. Disabled Veteran

1.3.11. "Control"

1.3.12. "Operate"

1.3.13. "Goal"

1.3.14. "Excluded category"

1.3.15. "Short-term goal"

1.3.16. "Mid-term goal"

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

TABLE OF CONTENTS (Cont.)

1.3.17. "Long-term goal"

1.3.18. "Utility"

1.3.19. "Clearinghouse"

1.3.20. "Subcontract"

1.3.20.1. Furnishing of supplies/services for use of real or personal property
1.3.20.2. Contractor's obligation

1.3.21. "Product and service categories"

2. VERIFICATION

2.1. Clearinghouse to supply verification form to applicant

2.2. Assessing suitability of WMDVBE to bid on procurement con-tracts

2.3. WMBEs to submit verification forms every three years 2.4. Completion of verification application

2.4 Completion of verification application

2.5. Endorsement of ability to perform

2.6. Availability of verification forms for inspection

2.7. Penalty for falsification

3. CLEARINGHOUSE

3.1. Purpose of clearinghouse

3.2. Effect of utility participation in auditing and verification pro-gram

3.3. Verification renewal forms

4. DISABLED VETERANS

4.1. Disabled Veteran Business Enterprise

4.1.1. Ownership

4.1.2. Management and control

4.1.3. Sole proprietorship

4.2. Administering Agency

4.3. Qualify as DVBE

5. SECTION 5 DELETED PER D.98-11-030.

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

TABLE OF CONTENTS (Cont.)

6. UTILITY IMPLEMENTATION

6.1. Internal Utility Program Development

6.1.1. Employee WMDVBE training

6.2. External Outreach

6.2.1. Outreach activities

6.3. Subcontracting Program

6.3.1. Subcontracting program to enhance, not replace WMDVBE prime contractor outreach program

6.3.2 Application of subcontracting program

6.3.3. Contracts not subject to subcontracting requirements

6.3.4. Development of subcontracting programs by prime con-tractors

6.3.5. WMDVBE notice in bids

6.3.6. Inclusion of statement that subcontracting with WMDVBEs is a factor to be considered in bid evaluation process

6.3.7. Inclusion of prime contractor progress in utility's annual report

6.3.8. Inclusion of subcontractor plans in utility's annual plan

6.3.9. Inclusion of subcontractor awards in utility's WMBE results

7. COMPLAINT PROCESS

7.1. Scope of Complaints

7.2. Complaints Concerning WMBE Verification Decisions

7.2.1. Appeal the clearinghouse's decision

7.2.2. Filing complaints by third parties and review by clearinghouse

7.2.3. Factual basis for questioning the challenged party's WMBE status

7.2.4. Pendency of a third party challenge of a verified WMBE

7.2.5. Criteria of third party complaint

7.3. Commission Review of WMBE Verification Complaints

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

TABLE OF CONTENTS (Cont.)

8. GOALS

8.1. Setting of Goals

8.1.1. Total utility purchasing and/or contracting projections

8.1.2. Availability of WMDVBEs and competitiveness in the geographical area served by utility

8.1.3. Market dynamics based on historical data and trends

8.1.4. Other appropriate factors which would increase the WMDVBEs' share of utility business

8.2. Minimum long-term goals

8.3. Long-term goals

8.4. Overall goals

8.4.1. Setting of goals by major category of products/services

8.5. "Excluded category" of products/services

8.6. Deduction of present purchasing dollars from WMDVBE goals

8.7. Method of expressing specific product goals

8.8. Method of expressing overall program goals

8.9. Payments to other utilities

8.10. Establish a Separate Fuel Procurement Base

8.10.1. Fuel to be included in standard procurement base used to establish goals

8.10.2. Fuel procurement base must include all purchases of natural gas from domestic onshore natural gas markets

8.10.3. Purchases from WMDVBE suppliers fuels other than domestic onshore natural gas

8.10.4. Exclude purchases of fuel other than domestic on-shore natural gas

8.11. Encouragement of WMDVBE entry into marketplace

8.12. No penalties for failure to meet goals

8.13. Utility reporting of goals

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

TABLE OF CONTENTS (Cont.)

9. ANNUAL REPORT

9.1. Contents of Report

9.1.1. Description of WMDVBE program activities

9.1.2. Summary of WMDVBE purchases/contracts

9.1.3. Itemization of WMDVBE program expense

9.1.4. Description of progress in meeting or exceeding set goals

9.1.5. Summary of prime contractor utilization of WMDVBE subcontractors

9.1.6. List of WMDVBE complaints

9.1.7. Summary of purchases/contracts for products/services in excluded categories

9.1.8. Description of efforts to recruit WMDVBE suppliers

9.1.9. Justification for continued existence of any "excluded category"

9.1.10. File verifiable report on WMDVBE participation in fuel markets

9.2. General Order not intended to permit erosion of WMDVBE programs

9.3. Further breakdown of reporting statistics authorized

10. ANNUAL PLAN

10.1. Contents of Plan

10.1.1. Goals

10.1.2. Description of WMDVBE program activities

10.1.3. Plans for recruiting WMDVBE suppliers where WMDVBE utilization has been low

10.1.4. Plans for recruiting WMDVBE suppliers in any "excluded category"

10.1.5. Plans for encouraging prime contractors and grantees to engage WMDVBEs

10.1.6. Plans for complying with WMDVBE program guide-lines

11. COMMISSION REPORT

11.1. Program recommendations for carrying out policy

11.2. Recommendations to utilities

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

1. GENERAL

1. 1. Intent

1.1.1. Purpose-These rules implement PU Code Sections 8281-8286 which require the Commission to establish a procedure for gas, electric, and telephone utilities with gross annual revenues exceeding $25,000,000 and their Commission-regulated subsidiaries and affiliates to submit annual detailed and verifiable plans for increasing women, minority and disabled veteran business enterprises' (WMDVBE) 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. 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 are applicable to all gas, electric, and telephone utilities under the Commission's jurisdiction with gross annual revenues exceeding $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, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, and other groups, as defined herein.

1.3.4. "WMBE" means a women-owned or minority-owned business enterprise; under these rules, the women and/or minorities owning such an enterprise must be either U.S. citizens or legal aliens with permanent residence status in the United States.

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

1.3.5. Black Americans-persons having origins in any black racial groups of Africa.

1.3.6. Hispanic Americans-all persons of Mexican, Puerto Rican, Cuban, South or Central American, Caribbean, and other Spanish culture or origin.

1.3.7. Native Americans-persons having origin in any of the original peoples of North America or the Hawaiian Is-lands, in particular, American Indians, Eskimos, Aleuts, and Native Hawaiians.

1.3.8. 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.

1.3.9. Other groups-whose members are found to be disadvantaged by the Small Business Administration pursuant to Section 8(d) of Small Business Act as amended (15 U.S.C. 637 (d)), or the Secretary of Commerce pursuant to Section 5 of Executive Order 11625.

1.3.10. Disabled Veteran-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.

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

1.3.12. "Operate" means being actively involved in the day-to-day management and not merely acting as officers or directors.

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

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

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

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

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

1.3.18. "Utility" means all electric, gas, and telephone corporations with gross annual revenues exceeding twenty-five million dollars ($25,000,000) and their Commission-regulated subsidiaries and affiliates.

1.3.19. "Clearinghouse" means a Commission-supervised program that shall conduct WMBE verifications and maintain a database of WMDVBEs for the use of utilities and the Commission.

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

1.3.20. "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):

1.3.20.1. 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

1.3.20.2. Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

1.3.21. "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.

2. VERIFICATION

The following rules and guidelines shall be used to verify the eligibility of women and minority business enterprises (WMBEs) for participation in utility WMDVBE 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.

2.2. In assessing the suitability of a WMDVBE 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 WMDVBE.

2.3. WMBEs 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 WMBE status. Filing of an application does not guarantee verification.

2.5. The fact that a verified WMDVBE is included in the clearing-house database shall neither be construed as an endorsement of its ability to perform nor shall such inclusion guarantee it business with the utilities.

2.6. WMBE 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.

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

3. CLEARINGHOUSE

The Commission shall maintain a clearinghouse for the sharing of WMDVBE identification and verification information.

3.1. The primary purpose of the clearinghouse shall be to audit and verify the status of WMBEs, and to establish and maintain a database of WMDVBEs that is accessible to the Commission and to participating utilities.

3.2. The clearinghouse auditing and verification program shall preclude the need for an individual utility to audit and verify the status of the WMBEs it does business with.

3.3. The clearinghouse shall distribute renewal verification forms to WMBEs at least once every three years. If the renewal is not completed and returned within a reasonable time, the clearinghouse shall notify the WMBE and utilities that the WMBE will not be listed as a verified WMBE in the shared database until the renewal is completed.

4. DISABLED VETERANS

The following rules and guidelines shall apply to service disabled veteran business enterprises (DVBE). "Disabled veteran" is defined in Section 1.3.10 of this General Order.

4.1. "Disabled veteran business enterprise" means a business concern certified by the administering agency 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. "Administering Agency" means the California State Department of General Services, Office of Small and Minority Business.

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, Office of Small and Minority Business verifying that such criteria have been met.

5. SECTION 5 DELETED PER D.98-11-030.

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

6. UTILITY IMPLEMENTATION

Each utility's WMDVBE program shall be designed to ensure that WMDVBEs are encouraged to become potential suppliers of products and services to the utilities subject to GO 156. Nothing in G0156 authorizes or permits a utility to utilize set-asides, preferences, or quotas in administration of its WMDVBE 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 WMDVBE program direction and guidance and to implement WMDVBE program requirements.

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

6.2. External Outreach

Each utility shall implement an outreach program to inform and recruit WMDVBEs 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 WMDVBE contractors and to expand WMDVBE source pools;

(2) Actively support the efforts of organizations experienced in the field who promote the interests of WMDVBE contractors;

(3) Work with WMDVBE 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 WMDVBE bidder, provide information concerning the relative range/ranking of the WMDVBE 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 WMDVBE 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 WMDVBEs;

(7) Summarize this General Order in its outreach pro-gram handouts. Such summaries shall state that WMDVBEs will be furnished a complete copy of this General Order upon request.

(S) Each utility is directed to offer the same assistance set forth in Section 6.2 to non-WMDVBEs, upon request.

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

6.3. Subcontracting Program

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

6.3.1. The subcontracting program shall serve as an enhancement to, and not as a replacement for, the utility's WMDVBE 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;

(3) Purchases/contracts which offer WMDVBE 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 con-tractors to develop plans to increase the utilization of WMDVBEs as subcontractors. Prime contractors shall be encouraged to submit to the utility plans that include goals for the utilization of WMDVBEs 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 WOMEN, MINORITY AND
DISABLED VETERAN OWNED BUSINESS ENTERRISES

(1) It is the policy of the utility that women, minority and disabled veteran owned business enterprises shall have the maximum practicable opportunity to participate in the performance of contracts. However, this policy shall not be used to exclude qualified non-WMDVBEs 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 prospective WMDVBE 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.

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

6.3.6. Each utility is encouraged to inform suppliers of products and services that suppliers' good faith efforts to subcontract with WMDVBEs 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 WMDVBE 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 WMDVBE subcontractors in all procurement categories which provide subcontracting opportunities.

6.3.9. Each utility may include awards to verified WMDVBE subcontractors in its WMBE results.

7. COMPLAINT PROCESS

Complaints relating to this general order shall be filed pursuant to PU Code § 1702 and Article 3 of the Commission's rules and procedures.

7.1. 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 WMBE Verification Decisions

All complaints concerning a verification decision of the clearinghouse will be governed by the following procedures.

7.2.1. Business enterprises whose WMBE status has been denied by the clearinghouse, or who have been deverified by the clearinghouse, may appeal the clearing-house's 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 WMBE status of businesses whose WMBE 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 WMBE. 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 WMBE status. If the clearinghouse determines that there appears to be an insufficient factual basis for the complaint, it shall inform the complainant and affected WMBE of this determination in writing within 20 business days of the receipt of the complaint. The clearinghouse shall inform the complainant of its right to appeal this determination to the Commission.

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

7.2.3. If the clearinghouse determines that there appears to be a sufficient factual basis for questioning the challenged party's WMBE status, it shall require the challenged party to provide the clearinghouse information sufficient to permit the evaluation of its WMBE 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 pro-posed 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.

7.2.4. During the pendency of a third party challenge of a verified WMBE, the presumption that the challenged party is a WMBE 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 WMBE Verification. Complaints regarding clearinghouse verification decisions shall comply with Article 3 of the Commission's Rules of Practice and Procedure, except that the clearinghouse, rather than one or more utilities, shall be named as the defendant. When reviewing appeals of clearinghouse verification decisions, the Commission shall determine whether there is substantial evidence in the record, when considered as a whole, to support the conclusion reached by the clearinghouse.

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 WMBEs. 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 WMDVBEs in utility purchases and contracts.

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 WMDVBEs and competitiveness in the geographical area served by the utility;

8.1.3. Market dynamics based on historical data and trends;

8.1.4. Other appropriate factors which would increase the WMDVBEs' 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 Enter-prise (DVBE) participation in procurement programs of the participating utilities is set at 1.5%, effective January 1, 1997.

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

8.3. 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 WMBEs.

8.4. 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.

8.4.1. Goals shall beset 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 Section 8.5.

8.5. 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 WMDVBE suppliers of products or services in areas where WMDVBE suppliers are currently unavailable, or where sole source procurement is currently the only available procurement method. The utility may also explain in detail in its annual report how its ability to meet its WMDVBE goals are affected because WMDVBEs 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, 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 instance.

8.6. 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 WMDVBEs 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 de-scribe 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 this General Order (May 30, 1988).

8.7. 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.

8.8. 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 8.10.

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

8.9. 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.

8.10. Each utility may establish a separate fuel procurement base for reporting progress and establishing goals for procurement of fuels from WMDVBEs. Utilities choosing to report fuel purchases separately from the purchase of other products and services must follow the guidelines set forth below:

8.10.1. 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;

8.10.2. The fuel procurement base must, at a minimum, include all purchases of natural gas from domestic on-shore natural gas markets;

8.10.3. Utilities which purchase from WMDVBE suppliers fuels other than domestic onshore natural gas must include such purchases in the fuel procurement base because Section 8.5 does not permit utilities to exclude product and services categories for which there are available WMDVBEs;

8.10.4. Utilities may exclude purchases of fuel other than domestic onshore natural gas if such fuel qualifies for an exclusion under Section 8.5 and if the utility plans for and reports on progress in increasing the procurement of such fuels from WMDVBEs.

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

8.12. No penalty shall be imposed for failure of any utility to meet and/or exceed goals.

8.13. Utilities shall report their goals in their annual plans.

9. ANNUAL REPORT

Utilities shall serve twelve (12) copies on the Executive Director, by March 1 of each year, beginning in 1989, an Annual Report on their WMDVBE Program.

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

9.1.1. A description of WMDVBE program activities engaged in during the previous calendar year. This description shall include both internal and external activities.

9.1.2. A summary of WMDVBE 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.

9.1.3. An itemization of WMDVBE program expenses provided in the format required by Attachment A to D.95-12-045.

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 WMDVBE subcontractors.

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

9.1.6. A list of WMDVBE 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 summary of purchases and/or contracts for products and services in excluded categories.

9.1.8. A description of any efforts made to recruit WMDVBE suppliers of products or services in procurement categories where WMDVBE utilization has been low, such as legal and financial services, fuel procurement, and areas that are considered highly technical in nature.

9.1.9. Utilities shall retain all documents and data they rely on in preparing their WMDVBE 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.

9.1.10. Each utility which elects to report fuel procurement separately must file with the Executive Director by March 1 of each year, beginning in 1991, a separate detailed and verifiable report on WMDVBE 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;
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 WMDVBE goals for fuel;
2. A comprehensive description of the specific out-reach programs used to seek WMDVBE fuel sup-pliers in each market in which fuel is purchased;
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 WMDVBE 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).

ATTACHMENT A:
General Order 156 (Current as of December 15, 2005)

10. ANNUAL PLAN

Utilities shall serve twelve (12) copies on the Executive Director, by March 1 of each year, beginning in 1989, a detailed and verifiable plan for encouraging women, minority, and disabled veteran 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 WMDVBE program activities planned for the next calendar year. This description shall include both internal and external activities;

10.1.3. Plans for recruiting WMDVBE suppliers of products or services where WMDVBE 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 WMDVBE sup-pliers of products or services in any "excluded category" of products or services which has been removed from the procurement dollar base used to set goals because of the established unavailability of WMDVBE suppliers.

10.1.4 Plans for seeking and or recruiting WMDVBE suppliers of products or services where WMDVBE suppliers are currently unavailable.

10.1.5. Plans for encouraging both prime contractors and grantees to engage WMDVBEs in subcontracts in all categories which provide subcontracting opportunities.

10.1.6. Plans for complying with the WMDVBE program guidelines established by the Commission as required by Public Utilities 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.

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.

Approved and dated November 5, 1998 to become effective November 5, 1998, at San Francisco, California.

PUBLIC UTILITIES COMMISSION STATE OF CALIFORNIA
By Steve Larson, *Executive Director*

(END OF ATTACHMENT A)

ATTACHMENT B:
Proposed Changes to GO 156

3. CLEARINGHOUSE

The Commission shall ~~maintain~~ provide a clearinghouse for the sharing of WMDVBE 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 to operate such a clearinghouse. In authorizing a utility-formed entity, the Commission will state 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.~~1~~2. The primary purpose of the clearinghouse shall be to audit and verify the status of WMBEs, and to establish and maintain a database of WMDVBEs that is accessible to the Commission and to participating utilities.

3.~~2~~3. The clearinghouse auditing and verification program shall preclude the need for an individual utility to audit and verify the status of the WMBEs it does business with.

3.~~3~~ 4. The clearinghouse shall distribute renewal verification forms to WMBEs at least once every three years. If the renewal is not completed and returned within a reasonable time, the clearinghouse shall notify the WMBE and utilities that the WMBE will not be listed as a verified WMBE in the shared database until the renewal is completed.

7. COMPLAINT PROCESS

7.1 Complaints relating to this general order shall be filed and appealed only pursuant to ~~PU Code § 1702 and Article 3 of the Commission's rules and procedures~~the procedure set forth in this Section 7.

~~7.1.~~ 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 WMBE Verification Decisions All complaints concerning a verification decision of the clearinghouse will be governed by the following procedures.

7.2.1. Business enterprises whose WMBE status has been denied by the clearinghouse, or who have been deverified by the clearinghouse, may appeal the clearing-house's 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.

ATTACHMENT B:
Proposed Changes to GO 156:

7.2.2. Third parties may file complaints challenging the WMBE status of businesses whose WMBE 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 WMBE. 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 WMBE status. If the clearinghouse determines that there appears to be an insufficient factual basis for the complaint, it shall inform the complainant and affected WMBE of this determination in writing within 20 business days of the receipt of the complaint. The clearinghouse shall 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 WMBE status, it shall require the challenged party to provide the clearinghouse information sufficient to permit the evaluation of its WMBE 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.

7.2.4. During the pendency of a third party challenge of a verified WMBE, the presumption that the challenged party is a WMBE 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 WMBE Verification Complaints

~~Complaints regarding clearinghouse verification decisions shall comply with Article 3 of the Commission's Rules of Practice and Procedure, except that the clearinghouse, rather than one or more utilities, shall be named as the defendant. When reviewing appeals of clearinghouse verification decisions, the Commission shall determine whether there is substantial evidence in the record, when considered as a whole, to support the conclusion reached by the clearinghouse.~~

ATTACHMENT B:
Proposed Changes to GO 156:

7.3.1. The complainant, within 20 days after the service of the clearinghouse's final decision on the complaint, may submit a Notice of Appeal to the Chief Administrative Law Judge, indicating the grounds for the appeal. The complainant shall also send a copy to the clearinghouse. The appeal will not be docketed as a formal proceeding.

7.3.2. The complainant and clearinghouse will 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.

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.

ATTACHMENT B:
Proposed Changes to GO 156:

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.

(END OF ATTACHMENT B)