

Assembly Utilities and Commerce Committee
June 17, 2011
Technology Diversity Meets Supplier Diversity

Introduction

Supplier diversity policies encourage procurement from under-utilized suppliers. Ultimately, business procurement practices would reflect the demographics of the communities they serve.

Background

A diverse supplier is defined as **51 percent owned** by a woman, minority or disabled veteran (**WMDVBE**) who manages and controls the firm's day-to-day business operations. Firms must be located in the United States or its territories; and the owners must be U.S. citizens or legal permanent residents.

Beginning in 1986, the California Legislature enacted a series of statutes to encourage a fair proportion of total utility contracts and subcontracts for products and services to be awarded to women, minority, and disabled veteran business enterprises. The purposes of these statutes are to (a) encourage greater economic opportunity for women, minority, and disabled veteran business enterprises; (b) promote competition among regulated public utility suppliers to enhance economic efficiency in the procurement of electrical, gas, and telephone corporations' (and their affiliates') contracts; and (c) clarify and expand the program for utilities' procurement of products and services from WMDVBE enterprises.

California Public Utilities Commission (Commission)-regulated electrical, gas, and telephone corporations with gross annual revenues exceeding \$25 million and their Commission-regulated subsidiaries and affiliates are directly covered by these laws.

Commission-regulated water utilities, that are privately owned and operated, were not originally required to participate in the program; however, the largest water companies in the State have been voluntarily complying. The Legislature added a statutory requirement for water companies with gross annual revenues exceeding \$25 million beginning in 2009. Other smaller utilities have chosen to similarly expand their procurement programs to achieve the statutory purposes.

The Legislature passed AB 3678 (Moore, Chapter 1259, Statutes of 1986) which requires California regulated utilities with \$25 million in annual revenues to establish a program to procure goods and services from woman- and minority-owned business enterprises. In response to AB 3678, the Commission established goals for the utilities to follow in meeting

these requirements. General Order (GO) 156,¹ first adopted in 1988, sets forth Commission guidelines for the utilities to follow in meeting the statutory goals set forth in Public Utilities Code Section 8281-8286. Nothing in GO 156 authorizes or permits a utility to use set-asides, preferences, or quotas in administration of its WMDVBE program and utilities retain the authority to use legitimate business judgment to select a supplier for a particular contract.

In GO 156, the Commission established voluntary procurement goals for each covered utility of 5% for woman-owned, 15% for minority-owned and 1.5% for disabled veteran-owned business enterprises. The utilities report annually on their procurement purchases from WMDVBEs, and their progress in meeting the procurement goals. GO 156 also authorized participating utilities to establish a joint clearinghouse to certify women-owned and minority-owned suppliers. Disabled veteran-owned business enterprises are certified by the California State Department of General Services, Office of Small and Minority Business. A utility that contracts with a supplier who is not certified may not count those expenditures listed in the utilities' annual reports to the Commission. However, there is no penalty for failure of any utility to meet or exceed their annual goals.

AB 2758 (Bradford, Chapter 475, Statutes of 2010) declared policy of the state to ensure that a fair proportion of the total purchases and contracts or subcontracts for commodities, supplies, technology, property, and services for regulated public utilities, including, but not limited to, renewable energy, wireless telecommunications, broadband, smart grid, and rail projects, are awarded to women, minority, and disabled veteran business enterprises. Because AB 2758 was enacted in 2010, the 2010 IOU Supplier Diversity reports will not reflect these new procurement requirements. However, in subsequent years, new IOU Supplier Diversity reports will bring light to the proportion of WMDVBE suppliers providing renewable energy, and other services to IOUs.

2010 IOU Reporting

Pacific Gas & Electric's (PG&E), for the fifth year in a row, exceeded the Commission's goal of 21.5% of total utility procurement sourced with WMDVBEs. Moreover, PG&E also exceeded its own company goal of 30% for an all-time high of 32.7% of utility procurement in 2010 with WMDVBEs.

Southern California Edison's total procurement with WMDVBEs exceeded \$1.1 billion, which is up \$375.34 million over the previous year. Spending with qualified diverse business enterprises (DBEs) grew to 27.1%, rising from 23.6% in 2009 and exceeding the Commission's target of 21.5%

Southern California Gas Company (SoCalGas) purchased almost \$230 million worth of products and services with DBEs, constituting more than 37% of total purchases, setting SoCalGas

¹ http://docs.cpuc.ca.gov/word_pdf/GENERAL_ORDER/59939.pdf

records for both the dollar amount and percentage of overall spending. This performance places SoCalGas 15 percentage points above the overall Commission DBE spending goal.

San Diego Gas & Electric (SDG&E) achieved or exceeded DBE spending goals in 2010. SDG&E purchased more than \$385 million worth of products and services with DBEs, constituting more than 37% of total purchases, compared to \$238 million in 2009. This performance surpasses the 21.5% goal established by the Commission.

Renewable Energy Reporting

There is currently no specific Diversity Policy Reporting Requirement for renewable energy companies. Thus, the extent to which renewable energy companies have Diversity Policies is fairly difficult to ascertain. However, California's commitment to renewable energy development has stimulated the growth of a number of companies, many of which are doing business here in California.

According to the Solar Energy Industries Association, Inc., the United States solar market was \$6 billion in 2010. Renewable energy companies actively doing business California include publicly-traded firms and private firms:²

- **Bright Source Energy, Inc.** BrightSource Energy, Inc. designs, develops and sells solar thermal power systems that deliver reliable and cost-competitive clean energy to utilities and industrial companies.
- **enXco.** enXco is a renewable energy developer. enXco's renewable energy portfolio consists of over 47 renewable energy projects in 15 states, with additional development activity in Mexico, and Canada. According to enXco, services over 5,370 turbines representing 16 different turbine manufacturers, generating over 4,800 MW of electricity and they have successfully developed 31 wind projects generating over 3 GW and 10 solar projects generating over 68 MW.
- **First Solar.** First Solar is a solar photovoltaic manufacturer. First Solar is listed on the Standard & Poor's 500 and has approximately 4,700 employees world-wide. Total revenue in 2010 exceeded \$2.5 billion. According to First Solar, their projects represent approximately 16% of the announced 8.6GW of U.S. utility-scale solar PV and concentrated solar projects.
- **NextEra.** NextEra is a conglomerate of several business affiliates, one of which is NextEra Energy. According to NextEra, NextEra Energy is North America's top producer of energy from the wind and the sun. NextEra has more than 15,000 employees across the United States and Canada. Total revenue in 2010 exceeded \$15 billion. The company co-owns and operates seven solar plants in California's Mojave Desert. NextEra has a Diversity and Inclusion Policy that is articulated by the Chairman of the Board. This policy includes a vision

² Information about these companies was obtained from either company websites, their most recent annual reports, and financial websites (such as Yahoo Finance) to gather recent income data for publicly-traded firms.

and commitment, a Diversity Council, and Employee Groups. The information about NextEra's commitment is readily available on its website.

- SunEdison. SunEdison is owned by MEMC Electronic Materials, a manufacturer of solar photovoltaic cells. MEMC's SunEdison designs, develops, installs, finances and monitors solar energy systems and facilitates the sale of solar generated electricity. According to MEMC, through SunEdison, MEMC is one of the world's leading developers of solar energy projects and, we believe, one of the most geographically diverse. Total revenue in 2010 for MEMC exceeded \$2 billion. As of March 31, 2011, SunEdison had a project pipeline of approximately 1,870MW, which includes projects under construction totaling 105MW. SunEdison uses the term "pipeline" to identify solar energy systems for which SunEdison has a signed power purchase agreement or a secured grid connection site and completed permitting, or a letter of intent identifying the terms and conditions to develop the proposed transaction. SunEdison's net sales of \$420.5 million for the year ended December 31, 2010 consisted mainly of the completion and sale of 17 solar energy systems, totaling 83.4MW. Net sales also included revenues of \$48.3 million from energy production. SunEdison, now based in Maryland, plans to transfer 100 employees to new headquarters in Belmont California and expect to add 400 new positions.
- SunPower Corp. SunPower is a 'vertically integrated company' which means that they can manufacture solar photovoltaic modules and, in some cases, design and installs complete photovoltaic systems. Sunpower also distributes its products through a network of SunPower authorized dealers. SunPower's revenue in 2010 exceeded \$2 billion.
- Terra-Gen Power is a renewable energy company focused on geothermal, wind and solar generation. Terra-Gen Power owns 1,556 MW of renewable generating facilities across 26 projects, 19 of which are operated and managed by Terra-Gen's wholly owned subsidiaries.

Only one of these companies articulates a supplier diversity policy. Many of these companies do business or plan to do business with IOUs, thus to some extent, the provisions of AB 2758 may provide impetus to these companies to implement, if they have not already, supplier diversity programs or develop new business partnership with qualified WMDVBE companies.

2010 Telecommunications Providers Reporting

In 2010, AT&T California supplier diversity results were 40% of its total purchasing in the State. This achievement represents \$948 million in diversity spend, an increase of 26.5% from 2009 results.

The MBE results were 27.6% which equates to \$653M of MBE spend. Additionally, in 2010, WBE results were 10.3% which equates to \$244M—a 17% increase over 2009. DVBE spend was \$52M, increasing 44% over 2009 to an overall result of 2.19%.

In 2010, the total percentages spent on WBE and MBEs exceeded the GO 156 goals. WMDVBE spend was a total of 41.3%. Additionally, total DVBE spend was \$6,210,339.