

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Consumer Service and Information Division
Information and Analysis BranchRESOLUTION CSID-001
January 11, 2007**R E S O L U T I O N****Resolution CSID - 001. Adopting Proposal of the Joint Utilities to Operate the Clearinghouse of Woman- Minority- and Disabled Veteran-Owned Suppliers for Utilities Subject to the General Order 156 as Revised in (D).06-08-031.****Summary**

This Resolution adopts the proposal by the Joint Utilities (JU)¹ to operate the Clearinghouse of woman-, minority-, and disabled veteran-owned suppliers for utilities subject to the General Order 156. Decision (D).06-08-031 revised certain rules that allow for a utility-formed entity to operate (or contract for the service) to certify businesses to supply goods and services to California's regulated utilities. The Commission maintains oversight of the rules that govern these processes and is the venue for suppliers to appeal Clearinghouse or JU decisions.

Background

The Legislature passed Assembly Bill 3678, 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 Assembly Bill 3678, the Commission issued General Order 156 (GO 156), which established guidelines for the utilities to follow in meeting these requirements.

In GO 156, the Commission established procurement goals of 5% for woman-, 15% for minority-, and 1.5% for disabled veteran-owned business enterprises. The utilities are required to report annually on their expenditures with women-, minority-, and disabled veteran-owned business enterprises (WMDVBEs), and their progress in meeting the procurement goals. GO 156 also required participating utilities to establish a joint clearinghouse to certify women and minority vendors. A vendor who is not certified may not receive credit for their expenditures by the

¹ The JU is comprised of Southern California Edison, Verizon, AT&T, Pacific Gas and Electric Company, Sempra Energy, and a representative for the remaining utilities, to be designated annually commencing on or about February 1, 2007, by the remaining utilities.

utilities toward their annual goal nor be included in the expenditures listed in the utilities' annual reports to the Commission.

For several years, the Commission has used a contractor to operate the Clearinghouse and perform the verification services. Operational costs for the Clearinghouse are billed to the Commission and reimbursed by the participating utilities. In 2005, the Department of General Services (DGS) informed the Commission that this arrangement was no longer acceptable. To address these concerns, the Commission considered several options and determined the most feasible was to have the utilities pay the operational costs of the Clearinghouse directly.

An Order Instituting Rulemaking (R.06-04-011) was issued to accomplish this goal. Comments were received from interested parties, and those deemed meritorious were included in the Proposed Decision. The Decision called upon the utilities to offer a proposal to accomplish the goals of removing the CPUC from the Clearinghouse payment process, while still maintaining the CPUC's mandated oversight role. The Joint Utilities offered a proposal to accomplish the transfer of the funding mechanism and related administrative functions. The proposal is based on the contract the CPUC uses with the Clearinghouse.

Notice

All parties in R.06-04-011 were timely served with D.06-08-031 and the public was timely noticed in the Commission's Daily Calendar. The JU submitted timely comments and a proposal for Clearinghouse operation on September 25, 2006.

Discussion

The proposal submitted on September 25, 2006 clearly outlines a process whereby the utilities form an entity known as the "Joint Utilities" or JU that will contract for the operation of the Clearinghouse, thereby removing the Commission from the day-to-day administration and payment functions. The Commission does however maintain its mandated oversight role. The JU proposal is comprised of a Master Services Agreement and a Statement of Work. (See Attachment 1 for Statement of Work) Each member of the JU must execute the Agreement with the extant Clearinghouse and/or any successor.¹

The Commission's Consumer Service and Information Division staff has reviewed the Master Services Agreement and Statement of Work. The Statement of Work clearly details the processes that will be used within the new JU approach. Staff's analysis supports the processes defined in the Statement of Work as they are very similar to the existing Scope of Work in the State's existing contract with the Clearinghouse. There are two areas that merit further discussion. They are amendments to GO 156 regarding appeal processes within the certification process and the JU's access to and use of the Clearinghouse-complied database of verified WMDVBEs

The Statement of Work requires the Clearinghouse to review complaints concerning Clearinghouse verification decisions, as outlined in GO 156 Section 7, and properly notes that

¹ Asian Inc. is currently under contract with the State of California to perform as the Clearinghouse. Agreement Number 04PS5476 expires January 30, 2007.

the Commission shall have final jurisdiction on any appeal after a final decision has been rendered by the Clearinghouse. Although the JU will have contractual relationships with the Clearinghouse, the JU are not in any way responsible for verification decisions made by the Clearinghouse, or by the Commission, in response to complaints concerning such verification decisions. The Commission has always been the ultimate arbiter of verification status, and will remain so.

As part of the verification process, the Clearinghouse develops and maintains information regarding applicants. Certain information regarding applicants verified by the Clearinghouse, or Disabled Business Enterprises verified by the California State Department of General Services Office of Small and Minority Business, is transmitted to the Commission as part of the Clearinghouse data base that will be a major product of the contract between the Clearinghouse and the JU. Most of this database information is non-confidential and has long been made available to the Commission, utilities, and the public. Portions of the database information, however, are confidential, and provided only to the Commission, and to participating utilities whose procurement employees sign appropriate confidentiality agreements.

The Clearinghouse, participating utilities, and the Commission are each subject to certain legal restrictions on the disclosure of confidential and sensitive information regarding applicants. (*See, e.g.,* Civil Code Sections 1798 *et seq.*; Government Code Section 11019.9.) The Statement of Work sets forth requirements the Contractor must follow to ensure the security and integrity of confidential and sensitive Clearinghouse information in its possession. To the extent that confidential and sensitive information will be transmitted by the Clearinghouse to the Commission, such information must be protected against inappropriate disclosure by the Commission, pursuant to the requirements of Civil Code Section 1798 *et seq.*; Government Code Section 11019.9, and other authorities. The Commission will, of course, be solely responsible for the actions of its employees. Any effort to hold the JU legally responsible for the actions of Commission employees relating to the implementation of Commission responsibilities under Public Utilities Code Sections 8281-8286, simply because of contractual relationships between the JU and the Clearinghouse, will be viewed by the Commission as an inappropriate attempt to interfere with the Commission in its performance of its official duties, in violation of Public Utilities Code Section 1759.

Similarly, utilities which receive confidential and sensitive information from the Clearinghouse directly or from the Commission, after their employees execute appropriate confidentiality agreements, must comply with all relevant laws and Commission determinations regarding the security and integrity of such information, and must take full responsibility for the actions of their employees. Any effort to hold the Commission responsible for inappropriate information disclosures by utility employees will be similarly viewed as interference with Commission's performance of its responsibilities. The Consumer Services and Information Division may, if necessary or desirable, enter into a memorandum of understanding or other agreement memorializing specific responsibilities for maintaining the security and integrity of confidential and sensitive information developed and transmitted during the performance of the contract and implementation of GO 156.

In order to ensure the transition to this new Clearinghouse arrangement is smooth and efficient, we direct CSID to monitor and evaluate the performance of the Clearinghouse contract (including audits of revenues and expenditures associated with the verification program) on a periodic basis. As we noted in D.06-08-031, the JU may assist staff by proposing appropriate criteria and methods for such performance reviews. (D.06-08-031, at p. 13.) CSID should, no later than 6 months from now, provide us with a brief report summarizing the findings of its initial findings. If CSID identifies significant problems earlier, it should, of course, bring these matters to our attention. If staff's monitoring and evaluation concludes that the contractor is performing unsatisfactorily, the JU will be directed to terminate the contract. Additionally, while the JU proposal to enter into a one year contract with the existing Clearinghouse operator, subject to extension, is acceptable, we recognize that the JU may in the future place the contract out for competitive bidding. We authorize CSID to veto the selection of any future bidder it finds unacceptable. (*Id.*, at p. 12.)

Furthermore, we place the Clearinghouse operator and JU on notice that, notwithstanding the adoption of this Resolution, we intend to continue our role of assuring that the Clearinghouse functions in an efficient and effective manner.

Comments

This draft resolution was mailed on December 14, 2006, two days after the 30-day comment period required under Pub. Util. Code Sec. 311(g)(1). Pursuant to Sec. 311 (g)(3) and Rule 14.6(c)(9), the Commission may determine on its own motion that public necessity requires the reduction or waiver of the 30-day period for public review and comment. Here, we reduce the review period to 28 days. The public interest in having the Commission consider this resolution regarding the disposition of the Clearinghouse function of the Commission's Utility Supplier Diversity Program before the expiration of the 30-day review and comment period clearly outweighs the public interest in having the full 30-day review period, because it is important to ensure that the transfer of the operations of the Clearinghouse from the Commission to an alternative operating entity be considered well before the contract with the Clearinghouse expires on January 30, 2007.

In accordance with P.U. Code Section 311 (g) CSID mailed a copy of the original draft resolution on December 14, 2006 to the Service List in R.06-04-011. Comments were timely filed by December 29, 2006, by Pacific Bell/AT&T California, Verizon California and San Diego Gas & Electric/Southern California Gas Company (Commentors).

Commentors assert that Section A-2 of the JU's proposed Statement of Work would reduce options for verification by reducing the number of recognized comparable verifying agencies to three, and limiting the time from three years to one year that the clearinghouse can recognize comparable agency verifications. These utilities further stated that the Commission should retain the approach to comparable verification taken in D.06-08-031. D.06-08-031 addressed a proposal by the "San Diego Group" (San Diego Gas & Electric Company, Southern California Gas Company, Pacific Gas & Electric Company, and Southwest Gas Corporation) that "custody and control of the database should be placed with the Commission. Verifications by other 'equivalent agencies,' which meet the Commission's rigorous certification standards, should be recognized" (D.06-08-031, page 10) as follows:

The San Diego Group's proposed arrangement also contains positive features that we will carefully review if formally proposed to us. We reiterate that general oversight must remain with us. While other verifying agencies and organizations may provide excellent services, we do believe that unbridled comparable verification will lead to a lack of uniformity and a general weakening in our rigorous standards. Comparable verifications should be allowed for the limited period now allowed.

The last sentence of our response to the San Diego Group refers to the Commission's informal practice of permitting utilities to count contracts with business verified by any of a number of specific "comparable agencies" on a one-time only basis, for a period that terminates on the earlier of the date the comparable agency verification terminates under the rules of that agency or the end of the three year verification period that would have applied had the business been originally verified by the Clearinghouse. Once this initial one-time comparable agency verification period terminates, the business would need to be re-verified by the Commission's Clearinghouse.

As a practical matter, the majority of the comparable agency verifications received by the Clearinghouse over the past three years have involved verifications by the National Minority Supplier Development Council (NMSDC) and the Women's Business Enterprise National Council (WBENC), both of which have one year verification periods. The one-year maximum comparable agency verification period in the JU proposal adopted in this Resolution would not limit the verification period for any business verified by one of these two entities. Nor do we believe that adopting a standard one year period during which businesses verified by other comparable agencies could be counted under our program before being re-verified by the Clearinghouse would seriously disrupt utility WMDVBE programs.

The one year period during which utilities may count transactions with businesses verified by comparable agencies is an element of the JU's proposal, not a creature of the Commission. The JU's one year comparable agency verification period is consistent with the intent we expressed in D.06-08-031 regarding comparable agency verifications: "We share the Edison Group's concern about 'forum shopping' for less rigorous verification agencies. At the present, we do accept comparable verifications from other agencies, but this is only for a short time and the firm must be verified under our program within three years." (*Id.*, at page 10.) The JU's proposal presents us with a very useful and comprehensive approach to Clearinghouse administration and verification that is consistent with our longstanding desire for uniform and rigorous verifications. The incorporation of the one year maximum comparable agency verification adds, rather than subtracts, from the desired rigor of our verification program. In the future, we may revisit the use of comparable agency verifications. However, at this time, we decline to adopt the recommendations of Commentors.

Findings

1. The Joint Utilities' proposal complies with General Order 156 as amended in D.06-08-031 regarding establishment of an entity to fund and administer Clearinghouse functions.
2. Public Utilities Code Sections 8281-8286, GO 156, D.06-08-031 and other authorities require the Commission to adopt criteria for verifying and determining the eligibility of WMDVBEs for procurement contracts, and to oversee the implementation of the verification process adopted in this Resolution.
3. The Commission, through its Administrative Law Judges, will adjudicate any appeals of Clearinghouse decisions pursuant to GO 156 Section 7 and the Commission's Rules of Practice and Procedure.

THEREFORE, IT IS ORDERED THAT:

1. The Joint Utilities Proposal is adopted, in order to allow the Joint Utilities (JU) to initiate payments and assume administrative functions for the WMDVBE Clearinghouse on or before January 31, 2007.
2. The Commission review periodically the performance of the JU entity and its administration of Clearinghouse function of the WMDVBE program in GO 156.
3. The Consumer Services and Information Division (CSID) may, if necessary or desirable, enter into a memorandum of understanding or other agreement memorializing specific responsibilities for maintaining the security and integrity of confidential and sensitive information developed and transmitted during the performance of the contract and implementation of GO 156.
4. CSID shall monitor and evaluate the performance of the Clearinghouse contract (including audits of revenues and expenditures associated with the verification program) on a periodic basis. CSID shall, no later than 6 months from now, provide us with a brief report summarizing the findings of its initial findings. If CSID identifies significant problems earlier, it should, of course, bring these matters to our attention. If staff's monitoring and evaluation concludes that the contractor is performing unsatisfactorily, the JU will be directed to terminate the contract.
5. CSID will maintain oversight of the process whereby business are verified as WMDVBEs under the requirements of Public Utilities Code Sections 8281-8286, GO 156, and other appropriate Commission authority.
6. If in the future the JU seek competitive bids for the Clearinghouse contract, CSID is authorized to veto the selection of any bidder(s) its finds unacceptable.

This Resolution is effective today.

I hereby certify that this Resolution was adopted by the Public Utilities Commission at its regular meeting on January 11, 2007. The following Commissioners approved it:

STEVE LARSON
Executive Director

DRAFT

Consumer Services and Information Division
Issues and Analysis Branch

CSID-001
January 11, 2007

Attachment

Statement of Work
