
**SENATE COMMITTEE ON ENERGY, UTILITIES AND
COMMUNICATIONS**

Senator Ben Hueso, Chair

2019 - 2020 Regular

Bill No:	SB 255	Hearing Date:	3/27/2019
Author:	Bradford		
Version:	3/20/2019 As Amended		
Urgency:	No	Fiscal:	Yes
Consultant:	Sarah Smith		

SUBJECT: Women, minority, disabled veteran, and LGBT business enterprise procurement: electric service providers: energy storage system companies: community choice aggregators

DIGEST: This bill expands the California Public Utilities Commission (CPUC) supplier diversity program by lowering the revenue threshold for participation from \$25 million to \$1 million in California and including community choice aggregators, electric service providers, distributed energy resource companies, and certain wholesale electric generators as entities included in the program.

ANALYSIS:

Existing law:

- 1) Establishes a supplier diversity program by requiring the CPUC to direct each electrical corporation, gas corporation, water corporation, telephone corporation, and wireless telecommunications service provider with gross annual revenues exceeding \$25 million, to annually submit a plan for increasing procurement with women, minority, disabled veteran, and LGBT business enterprises (WMDVLGBTBEs). (Public Utilities Code §8283(a))
- 2) Supplier diversity program plans must include short-term and long-term goals and timetables and must include methods for encouraging contractors to engage WMDVLGBTBEs in all subcontracting categories, including, but not limited to renewable energy, wireless telecommunications, broadband, smart grid, and rail projects. The CPUC must develop guidelines for programs implemented pursuant to the plans and each participating company must submit an annual report on the implementation of programs established under a supplier diversity plan. (Public Utilities Code § 8283(b-d))
- 3) Each electrical, gas, water, mobile telephone service provider, telephone corporation, cable television corporation, and direct broadcast satellite provider that is not otherwise required to submit a plan is encouraged to voluntarily

adopt a plan for increasing WMDVLGBTBEs procurement and to voluntarily report activity in this area to the Legislature on an annual basis. (Public Utilities Code §8283(e))

- 4) Requires the CPUC to adopt eligibility criteria for women, minority, and LGBT business enterprises for procurement contracts and requires participating utilities to develop outreach plans to recruit WMDVLGBTBEs to apply for procurement contracts. (Public Utilities Code §8284)

This bill:

- 1) Modifies the revenue threshold of companies subject to the supplier diversity program requirements from \$25 million in total revenues to \$1 million in California revenues.
- 2) Adds the following types of businesses to the list of those that must annually submit a supplier diversity plan to the CPUC:
 - a) Electric service provider
 - b) Exempt wholesale generator contracting to sell electricity to a retail seller
 - c) Distributed energy resource contractor
 - d) Energy storage system company
- 3) Adds energy storage system and vegetation management to the categories of contracts and subcontracts for which participating companies must have goals to increase procurement from WMDVLGBTBEs.
- 4) Requires the CPUC to direct each community choice aggregator (CCA) with gross annual revenues exceeding \$1 million to annually submit a detailed and verifiable plan for increasing procurement from small, local, and diverse business enterprises in all contract categories, including, but not limited to, renewable energy, energy storage system, and smart grid projects.
- 5) Requires participating CCAs to submit a report to the CPUC regarding its procurement from WMDVLGBTBEs in all contract categories, including, but not limited to, renewable energy, energy storage system, and smart grid projects. The report must be in a format designated by the CPUC.
- 6) Encourages CCAs that are not otherwise required to develop a plan for increasing procurement from small, local, and diverse business enterprises.

- 7) Defines distributed energy resource contractors for the purpose of this bill and requires the Contractors' State License Board to help the CPUC in identifying and developing contact information for distributed energy resource contractors.

Background

Utility Supplier Diversity Program and General Order (GO) 156. In 1988, the CPUC adopted GO 156 (D. 88-04-057) to implement AB 3678 (Moore, Chapter 1259, Statutes of 1986), which required the CPUC to direct certain utilities to submit plans for increasing diverse business procurement. Under GO 156, the CPUC monitors utilities' procurement from WMDVLGBTBEs. The CPUC also administers a certification clearinghouse, which is a database that identifies firms that have voluntarily obtained certification as a WMDVLGBTBEs. The Supplier Diversity Program is a tool through which the state can leverage the economic power of the utility sector to address historic structural inequities for economic opportunity and ensure that WMDVLGBTBEs are included in contracting opportunities, including renewable energy contracts.

In September 2018, the CPUC completed its report to the Legislature on utilities' 2017 participation in the Supplier Diversity Program. The CPUC's report noted that the program encourages utilities to purchase at least 21 percent of their procurement from WMDVLGBTBEs (15 percent from minority business enterprises, five percent from women business enterprises, and 1.5 percent from disabled veteran business enterprises). According to the report, the participating utilities exceeded these goals and spent over \$10 billion through WMDVLGBTBEs in 2017. At the time of the report, the program did not have a goal for LGBT business enterprise (LGBTBE) procurement; however, the CPUC encourages LGBTBE procurement and intends to make a determination on an LGBTBE program goal by 2021.

The Supplier Diversity Program has evolved with changes to California's utility sector. Since its establishment in the 1980s, the CPUC has revised GO 156 to reflect new legislative requirements for the Supplier Diversity Program. These legislative requirements reflected changes in the utility sector and the scope of diverse businesses that can contract with utilities. For example, 2010 legislation (AB 1918, Davis, Chapter 456, Statutes of 2010) added wireless telecommunications service providers to the program. In 2014, legislation (AB 1678, Gordon, Chapter 633, Statutes of 2014) expanded the types of diverse contractors encouraged by the program to include LGBTBE.

California's electric retail provider landscape has changed significantly since the adoption of GO 156. The expansion of distributed energy resources, direct access

providers, and CCAs is decentralizing the electric retail sector and reducing the load of the state's three largest investor-owned utilities (IOUs). In 2017, a CPUC white paper on electric consumer retail choice estimated that rooftop solar, CCAs, and direct access would unbundle approximately 25 percent of load in IOU service territory by 2018. In the same paper, the CPUC estimated that this trend would continue, and over 85 percent of retail load may be served by sources other than the IOUs by the mid 2020s.

The departure of load from the IOUs may decrease IOU contracting and impact the degree to which WMDVLGBTBEs can count on new IOU contracts through the Supplier Diversity Program. Currently, direct access providers, distributed energy resource contractors, and CCAs are not required to participate in the Supplier Diversity Program. This bill would expand the program to include electric service providers, exempt wholesale generators contracting to sell electricity to a retail seller, distributed energy resource contractors, and energy storage system companies. This bill would also require CCAs with gross annual revenues exceeding \$1 million to submit plans for increasing procurement from small, local, and diverse business enterprises in all categories, including renewable energy, energy storage system, and smart grid projects. These revisions to the Supplier Diversity Program reflect the ongoing changes to the electric retail provider landscape and could help support efforts to ensure that WMDVLGBTBE electric sector contracting goals do not decline in the event that IOU contracting slows.

Legal restrictions and a lack of uniformity in reporting complicate CCA supplier diversity efforts. Some CCAs are already seeking ways to participate in supplier diversity initiatives. For example, in 2018, Marin Clean Energy began requesting that contractors voluntarily report their GO 156 certification status for power purchase agreements, feed-in tariffs, and customer program contracts. Marin Clean Energy found that 23 percent of survey respondents self-identified as GO 156 certified or used subcontractors that are GO 156 certified. Despite these efforts, legal restrictions make obtaining information related to protected classes challenging. California's Proposition 209 prohibits the State from discriminating against or granting preferential treatment to any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting. The proposition limits the degree to which any governmental entity within California, including CCAs, can compel information about certain protected classes to support contract decision-making. However, the Proposition does not prohibit after-the-fact reporting on outcomes from contracting. This bill requires CCAs to develop plans for small, local, and diverse business contracting but requires CCAs to report after-the-fact on contracting with WMDVLGBTBEs.

This bill also requires the CCAs to submit these reports in a format specified by the CPUC. While this requirement conforms to requirements in existing law for utilities participating the supplier diversity program, its inclusion in this bill is important for measuring contracting progress across different types of electric retail providers. While Marin Clean Energy has conducted a survey enabling the CCA to determine the percentage of responding contractors that self-identify as GO 156 certified, this information does not include the percentage of total contract spending made through WMDVLGBTBEs or the level of detail reported by current GO 156 participants. To the degree that the Supplier Diversity Program is intended to monitor and encourage contracting with WMDVLGBTBEs as a mechanism for enhancing economic opportunities through the electric retail sector, the ability to measure economic benefits provided across different types of retailers is critical to CPUC's efforts to measure relative progress towards contracting goals.

Need for amendments. As currently drafted, this bill defines a “distributed energy resource contractor as “...any person or corporation that installs or operates a distributed energy resource, as defined in Section 8370, and that is licensed by the Contractors’ State License Board.” This definition would require every individual licensed to install distributed energy resources and earning over \$1,000,000 to submit a supplier diversity plan and report to the CPUC. *The author and the committee may wish to clarify the definitions in this bill ensure that the planning and reporting requirements apply to the businesses that employ licensed contractors and not the individual contractors.* Developing a supplier diversity plan may not be a significant burden for companies with gross California revenues over \$1,000,000, and GO 156 has historically contained mechanisms for addressing concerns with utilities where the reporting presents an undue burden; however, it is unclear how many businesses will meet both this bill’s revenue threshold and the definitions of businesses required to report. To the extent that these thresholds and definitions result in a multitude of companies submitting plans and reporting to the CPUC, the CPUC may not have sufficient resources to meaningfully monitor these companies’ supplier diversity efforts.

Prior/Related Legislation

AB 1678 (Gordon, Chapter 633, Statutes of 2014) added LGBT business enterprises to the supplier diversity program and required the CPUC to adopt LGBT status qualifiers created by the National Gay and Lesbian Chamber of commerce with initially adopting eligibility criteria for LGBT business enterprises.

AB 1386 (Bradford, Chapter 443, Statutes of 2011) encouraged cable television corporations and direct broadcast satellite providers to voluntarily adopt plans to increase diverse spending.

AB 1918 (Davis, Chapter 456, Statutes of 2010) clarified certain certification requirements for the supplier diversity program, added wireless telecommunications service providers to the program, and encouraged providers below the \$25 million eligibility threshold to voluntarily report.

AB 3678 (Moore, Chapter 1259, Statutes of 1986) established the supplier diversity program by requiring each electrical, gas, and telephone corporation with gross annual revenues exceeding \$25 million to annually submit a detailed, verifiable plan for increasing diverse business procurement in all categories.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: Yes

SUPPORT:

California Asian Pacific Islander Chamber of Commerce
California Black Chamber of Commerce
Equality California
Golden Gate Business Association
MCE Clean Energy
Peninsula Clean Energy Authority

OPPOSITION:

None received

ARGUMENTS IN SUPPORT: According to the author:

“California’s utility supplier diversity law is one of the largest engines of socioeconomic mobility for historically-disadvantaged people in the State. In 1986, entities regulated by the California Public Utilities Commission (CPUC) spent less than \$500,000 per year with women and minority business enterprises. In 2017, that figure exceeded \$10 billion in direct spending with an additional \$2 billion in subcontracting. Over the past three decades, this program has evolved. Now, Women, Minority, Disabled Veteran, and LGBT Business Enterprises are included — as well as industries that did not exist in 1986, such as wireless telecommunications service providers.

But California’s electric grid has evolved too and our supplier diversity statute must be updated to reflect new technologies and business models. New technologies now enable distributed energy resources like photovoltaic solar, as well as energy storage, to deliver more power each year. New business models — including the elevated use of wholesale generators, as well as Electric Service Providers and Community Choice Aggregators — serve more and more electric customers each year within CPUC jurisdiction. But because they are left out of the supplier diversity statute, opportunities for small businesses and disadvantaged communities will likely decline. If new entities are to take over jobs once played by electric corporations, they should not duck their responsibility to increase supplier diversity.”

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