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Decision 91-05-025 May 8, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Allied Temporaries, Inc.,

Complainant,

v.

Southern California Gas Company,

Defendant.

ORIGINAL

Case 90-03-028
(Filed October 19, 1990)

Walter Cook, Esq., and Clarence H. Hunt, for
Allied Temporaries, Inc., complainant.
Peter Osborn, Esq., and Robert D. Cadish, Esq.,
for Southern California Gas Company, defendant.

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OPINION

This is a complaint by Allied Temporaries, Incorporated (Allied) against Southern California Gas Company (SoCal). Allied alleges that by failing to award it a contract on its bid to provide temporary clerical services, SoCal violated the equal protection provisions of the California Constitution, § 453 of the Public Utilities (PU) Code, and General Order (GO) 156. SoCal denies all of the allegations in the complaint.

A duly noticed public hearing was held in this matter before Administrative Law Judge (ALJ) Donald B. Jarvis in Los Angeles on July 12 and 13, 1990. The proceeding was submitted subject to the filing of the transcript and briefs, which have been filed.

I. Material Issues

The material issues presented in this matter are as follows: (1) did SoCal violate any provision of law or rule of the Commission by not awarding a contract to Allied; (2) does GO 156 require SoCal to use a formal competitive bidding process for all of its procurement; (3) does GO 156 require SoCal to hold a pre-bid conference as part of its contract award process.

II. Background

In 1986 the Legislature enacted PU Code §§ 8281 et seq. which had three goals:

- "(A) Encourage greater economic opportunity for women and minority business enterprises.
- "(B) Promote competition among regulated public utility suppliers in order to enhance economic efficiency in the procurement of electric, gas, and telephone corporation contracts and contracts of their

commission-regulated subsidiaries and affiliates.

- (C) Clarify and expand the program for the procurement by regulated public utilities of technology, equipment, supplies, services, materials, and construction work from women and minority business enterprises."

GO 156 was adopted by the Commission on April 27, 1988 to implement PU Code §§ 8281 et seq.

Allied is a corporation. Clarence Hunt (Hunt) is a black American who owns all of the common stock of Allied. Hunt is the president and chief executive officer of Allied, which qualifies as a women and minority business enterprise (WMBE) as defined in PU Code § 8282 and GO 156.

On September 1, 1989, SoCal sent an "Invitation to Bid" requesting bid proposals for a two-year period beginning January 2, 1990 for contract personnel to perform various types of work, including temporary office personnel. In years past, SoCal had utilized five contractors to provide these services. To comply with GO 156 it expanded the number to 15 contractors. SoCal sent the Invitation to Bid to 307 firms of which 58 were WMBEs. It received 82 responses of which 47 were from WMBEs. On or about November 3, 1989, SoCal selected 15 of the bidders to provide the services. Allied was not selected for a contract. Of the 15 selected, 13% were minority-owned businesses, 33% were women-owned businesses, and 60% were small businesses. SoCal rated Allied 22nd among the 82 bidders.

On November 3, 1989, SoCal sent Allied a letter which indicated that Allied was not selected as one of the contract providers. On November 7, 1989, Hunt sent a letter for Allied which requested an internal appeal of the rejected bid pursuant to GO 156. The letter also stated that: "Additionally, it is our belief that your bidding process violated AB 3678 and GO #156

thereby discriminating against minority vendors." At this time Allied did not know the identities of the successful bidders and how many of them were WMBEs. On December 6, 1989, SoCal responded to Hunt's letter. Allied sent to SoCal a letter on December 18, 1989, indicating it considered SoCal's response of December 6 to be insufficient and requested that SoCal furnish it with a written bid recap of each of the 15 selected vendors. The letter was received by SoCal on December 27, 1989, and responded to on December 29, 1989. The response indicated that the information could not be provided by December 28, 1989, as requested. On January 9, 1990, Hunt wrote SoCal that he had received no response to the December 18 letter. On January 29, 1990, SoCal sent a letter to Hunt which contained a recap of the 15 bids for which contracts were awarded. A meeting was had on February 14, 1990 between Hunt and representatives of SoCal. On February 15, 1990, Hunt sent a letter to SoCal which included his version of the meeting and demanding that SoCal immediately award Allied a contract to provide it temporary clerical services. On January 31, 1990, Hunt sent a letter to the chief executive officer of SoCal which requested another internal appeal. No action was taken on this request.

SoCal does not use a competitive bidding process for obtaining temporary programming services, which are used by the Information Systems Department. The reason it considers competitive bidding inappropriate is that it considers skill and experience more important than cost, although cost is a consideration. Selection of temporary programmers is made by the manager or supervisor who has need for the services. All of these managers and supervisors have received training in SoCal's WMBE procurement program. The Information Systems Department has a WMBE coordinator. It has conducted WMBE outreach activities, including forums and seminars to identify potential WMBE vendors. The Information Systems Department maintains a list of qualified vendors of temporary programmers. Steps are taken to include WMBE

firms on the list. Vendors are continuously added to the list. At the time of hearing there were 74 firms on the list of which 34% were WMBEs. In the 12 months prior to the hearing, the Information Systems Department used 33 of the 74 firms on the list and 36% of the 33 firms were WMBEs.

III. Discussion

A. Claims of Racial Discrimination

Paragraph 10 of the complaint alleges that:

"Despite the fact that each bid response was responsive, complete and competitive with successful vendors, SoCalGasCo, on and after September 11, 1989, arbitrarily discriminated against ALLIED and rejected each of ALLIED'S bid responses in violation of the equal protection clause of the California Constitution, Article I/7 or PUC section 453 on the basis that its President is a Black American businessman;..."

There is no evidence in the record which would support a finding that Allied was not awarded one of the 15 contracts because Hunt is a black American businessman.

The record does indicate that since 1985 SoCal has had an annual growth rate of 20% per year in its utilization of women and minority-owned firms. SoCal and some of its employees have received numerous awards and commendations for the manner in which they have utilized WMBE and small business firms.

Since there is no evidence to support a finding of racial discrimination, the issue will not be further discussed.

B. Does GO 156 Require Competitive Bidding in the Awarding of All Contracts by Utilities?

Allied contends that for a utility to comply with GO 156 it must use a formal competitive bidding procedure in awarding all contracts. There is no merit in this contention.

The statute (PU Code §§ 8281 et seq.) pursuant to which GO 156 was adopted does not require a competitive bidding procedure.

Allied argues that § 4.2.1.4 of GO 156 requires a formal competitive bidding procedure in the award of all contracts. The section provides as follows:

"4.2.1.4 At the request of any unsuccessful WMBE bidder, provide information concerning the relative range/ranking of the WMBE 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;..."

Allied contends that if there is no competitive bidding procedure a utility cannot comply with the section; hence, it concludes, competitive bidding is required in all instances. This is not correct. Allied's argument fails to give recognition to other portions of § 4.2.1. Sections 4.2.1.1 and 4.2.1.3 provide that each utility shall:

"4.2.1.1 Actively seek out opportunities to identify WMBE contractors and to expand WMBE source pools;..." (Emphasis added.)

"4.2.1.3 Work with WMBE 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;..." (Emphasis added.)

Section 4.2.1.4 does not mandate competitive bidding in the award of all utility contracts. It provides a procedure for an unsuccessful WMBE bidder to obtain information where a utility has used competitive bidding to award a contract.

C. Did SoCal's Use of the "Rule of Thumb"
in Applying the Criteria in the Invitation
to Bid Violate GO 156 or PU Code § 453?

The Invitation to Bid contained the following:

"It is anticipated our dollar volume for temporary help will exceed \$5,000,000 annually in 1990 and 1991. Fifteen agencies will be awarded contracts, and the awarding of the contracts will be based upon the criteria described below:

- "o Ability to provide prompt, efficient service at the most advantageous rates to our Company.
- "o Ability to service the majority of the multiple locations within the Southern California Gas Company's serving territory and meet our needs on a continual basis.
- "o Ability to provide reliable as well as skilled personnel in all job classifications or in defined specialized fields."

A list of 37 locations was attached to the Invitation to Bid. The locations most frequently requesting contract agency personnel were listed in descending order and the top ten locations were designated with an asterisk. The Invitation to Bid also contained the following:

"If you have any questions or do not plan to submit a bid, please call me at (213) 689-7003.

"Thank you,

/s/ Edmee Glorioso

Edmee Glorioso
Employment Services Supervisor"

In determining whether a vendor could serve a particular location, SoCal used a Rule of Thumb, which was an approximate one-half-hour driving time from the vendor's location to the SoCal

location. The Rule of Thumb was derived from conversations with vendors previously used by SoCal which reported that their temporary personnel preferred not to drive great distances because that had an overall impact on their salary. Among the successful 15 bidders were 5 previous vendors who had, on past occasions, discussed commute time considerations with SoCal personnel. These five previous vendors included a small business; a small business, women-owned, black; a small business, women-owned; a small business, owned by at least one woman and one other owner, who is neither a woman, nor a minority, nor a small business vendor.

The Rule of Thumb is neutral as to gender, minority status, or size of business. The actual award of the 15 contracts indicates it did not have a discriminatory result; 13% were awarded to minority-owned businesses; 33% to women-owned businesses, and 60% to small businesses.

It was not necessary for SoCal to include in the Invitation to Bid its in-house considerations for evaluating how tendered bids met the criteria set forth in the invitation.

Allied was not prejudiced in the awarding of the 15 contracts by the Rule of Thumb. At the time it tendered its bid, Allied had only one office in the areas specified in the invitation. That office was located on Wilshire Boulevard in Los Angeles. Allied was aware at the time it filed its bid of the ability to serve multiple locations criteria. Allied mailed its bid response to SoCal on September 11, 1989. On the same day it sent a letter to SoCal's Employment Services Supervisor, which contained the following text:

"Subject: New Allied Offices

"Dear Ms. Glorioso:

"Our firm is planning on opening new offices on April 1, 1990 in the following cities:
Bakersfield, Santa Barbara, Riverside, and
Newport Beach. Once these offices are opened

in early 1990, our firm will be able to fully service all of your firm's business locations.

"Sincerely,

/s/ Clarence A. Hunt, Jr.

Clarence A. Hunt, Jr.
President"

None of these proposed offices was ever opened. At the hearing Hunt testified that the plan to open new offices "wasn't a definite thing, it was -- we were anticipating doing this contingent upon receiving a contract." (RT 171-72.)

In ranking the bids to determine the 15 contracts to be awarded, SoCal could properly give more weight to firms having existing offices proximate to the areas to be served. SoCal did not violate PU Code § 453 or GO 156 by using the Rule of Thumb as a consideration in applying the bid criteria to the bids tendered.

D. Did GO 156 Require SoCal to Hold a Pre-bid Conference as Part of the Contract Award Process?

Allied contends that under GO 156 a pre-bid conference was required as part of the contract award process. The contention is not correct.

Allied argues that a pre-bid conference was required in order to comply with § 4.2.1.3 of GO 156. A plain reading of the section finds no such requirement.

Allied next asserts that a pre-bid conference was required under Allied Temporaries, Inc. v. Pacific Gas and Electric Co., Decision 90-03-032 in Case 88-08-048, dated March 14, 1990 (Allied v. PG&E). In Allied v. PG&E the Commission stated that PG&E had relied on inadequate reference checks in rejecting Allied's computer programming bid. The decision also indicated that "the specifications did not state that references should be provided for the specific type of work for which bidders were competing, although the PG&E witness testified that they should

have been." (Slip dec. at pp. 13-14.) As a result of the conceded deficiency in the specifications, PG&E was ordered to hold pre-bid conferences.

Allied v. PG&E rests on the facts presented in that case. It does not mandate pre-bid conferences for all utilities in their processes in awarding all contracts. It is not controlling in this proceeding because there were no ambiguities in the specifications.

E. Miscellaneous Contentions

Allied seems to take the position that having submitted a bid to SoCal it was entitled to the award of a contract because it is a WMBE. This is not correct.

Section 4.2 of GO 156 provides that:

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

This section does not mandate the award of a contract to each WMBE which applies for one.

Allied argues that:

"During the bid evaluation and subsequent appeal, SoCalGas made no attempt to break up the contract in order to accommodate Allied's perceived ability to serve 12 locations..." (Allied Opening Brief, p. 13.)

Such a procedure would have been contrary to law. It would have given Allied preferential treatment over other bidders, including other WMBEs. It would be contrary to the concept of promoting competition among regulated utility suppliers provided for in PU Code §§ 8281 et seq.

Allied next asserts that:

"In addition, even though the SoCalGas encourages vendors in the Invitation to Bid to 'sub-contract'...and even though SoCalGas has a subcontracting program that applies to this contract...it was never considered that Allied could sub-contract in order to expand its geographic base..." (Allied Opening Brief, p. 13.)

If Allied had desired to submit a bid which relied on subcontractors, it could have done so. It did not. Allied took a different tack. It notified SoCal that it proposed to open new offices in Bakersfield, Santa Barbara, Riverside, and Newport Beach. Once the bids were received, SoCal would have given Allied preferential treatment if it had rewritten Allied's bid to award a contract based on conditions not included in the bid.

SoCal met its obligations under GO 156 when it expanded the number of temporary service contracts from 5 to 15; sent the Invitation to Bid to 307 firms, of which 58 were WMBEs; and in the award of contracts selected firms of which 13% were minority-owned businesses, 33% were women-owned businesses, and 60% were small businesses.

F. Intervenor Fees

On July 9, 1990, Allied's attorney and WMBE Advocates, Inc. filed a request for eligibility in this and three other similar proceedings. SoCal filed a response opposing the request.

WMBE Advocates, Inc. is a corporation. Hunt is its president and sole shareholder. It shares offices with Allied in San Francisco.

This is not a proceeding which involves electric rates or electric rate design. Thus, the provisions of Rules 76.01 et seq. are not applicable. Similarly, since it is not a rate proceeding Rules 76.51 et seq. are also not applicable. However, on October 11, 1982, the Advocates Trust Fund of the California Public Utilities Commission was established. The specific purpose of the Trust "is to receive, hold and, from time to time, disburse funds from either income or principal solely to defray expenses, including attorneys' fees and expert witness fees directly related to litigation or representation of consumer interests in 'quasi-judicial complaint cases,' as defined in Consumers Lobby Against Monopolies vs. Public Utilities Commission, 25 Cal. 3d 891 (1979) where the California Public Utilities Commission...has jurisdiction

to make attorney fee awards." We consider whether the request for eligibility should be granted under the Trust.

The Trust provides that:

- "1.3 Attorneys fees may be awarded only where it is clearly and convincingly demonstrated that the private party has made a direct, primary and substantial contribution to the result of the case. Fees will be awarded from the Advocates Trust Fund where complainants have generated a common fund but that fund is inadequate to meet reasonable attorney or expert witness fees, where a substantial benefit has been conferred upon a party or members of an ascertainable class of persons but no convenient means are available for charging those benefitted with the cost of obtaining the benefit, or where complainants have acted as private attorneys general in vindicating an important principle of statutory or constitutional law, but no other means or fund is available for award of fees.
- "1.4 An award will be based upon consideration of three factors: (1) the strength or societal importance of the public policy vindicated by the litigation, (2) the necessity for private enforcement and the magnitude of the resultant burden on the complainant, and (3) the number of people standing to benefit from the decision. No award will be made without a specific finding by the CPUC of what would be a reasonable amount for advocates' attorneys', or expert witness fees, in view of the time spent, expenses proven, level of skill shown, and comparable fees paid to others practicing public utility law. No award should be made where a party's own economic interest is sufficient to motivate participation."

In view of the findings and conclusions herein Allied does not qualify under § 1.3. No common fund was generated. No substantial benefit has been conferred on a party or ascertainable class of persons. No important principle of statutory or constitutional law has been vindicated. Since Allied does not qualify for attorney's fees under § 1.3, it is unnecessary to consider the factors under § 1.4, including whether Hunt's own economic interest was sufficient to motivate participation. The request for eligibility will be denied.

IV. Comments

The ALJ's proposed decision was filed on March 22, 1991. On March 28, 1991 Hunt, on behalf of Allied, filed a "Comment on Proposed Decision; Request To Set-Aside Proposed Decision; Request For Rehearing; Declaration." Thereafter, on April 11, 1991, Walter Cook, Esq. (Cook), Allied's attorney of record, filed comments on the proposed decision on behalf of Allied. On April 11, 1991, SoCal filed comments on the proposed decision and a reply to the filing by Hunt and on April 16, 1991 a reply to the comments filed by Cook.

Hunt contends that the proposed decision should not be adopted because the findings and conclusions are wrong and "it is our opinion that Judge Jarvis' personal prejudice toward minority business enterprise issues and his expressed favoritism toward utility management has caused him to write the proposed decision at issue." Hunt also claims that the ALJ decided the matter adversely to Allied because of inquiries made to the Commission about the time in which the proposed decision would be issued. No facts are alleged to support these contentions. They are baseless and have no merit.

Federal and state precedents on this issue are extensive. In United States v. Grinnell Corp. (1966) 348 U.S. 563, 583, the

U.S. Supreme Court held that "alleged bias and prejudice to be disqualifying must stem from an extrajudicial source and result in an opinion on the merits". In addition, "[t]he factual averments must give fair support to the charge of a bent of mind that may prevent or impede impartiality of judgment" (Berger v. United States, 255 U.S. 22, 33-34). Allegations of bias must be more than mere conclusions, opinions or rumors and must be stated with particularity. (See United States v. Barnes (7th Cir. 1990) 909 F.2d 1059, 1071-72; United States v. Haldeman (D.C. Cir. 1976) 559 F.2d 131.) California courts have held that "a judge's expressions of opinion uttered in what he conceives to be the discharge of his judicial duty [are not] evidence of bias or prejudice" (See Shakin v. Board of Medical Examiners (1967) 254 Cal.App.2d 102, Andrews v. Agricultural Labor Relations Bd. (1981) 28 Cal.3d 781, citing Kreling v. Superior Court, 63 Cal.App.2d 353, 359).

Hunt's request for a rehearing is premature and denied. (PU Code § 1731.)

The remaining points raised in the filings of Hunt and Cook are rearguments of positions previously argued and briefed. Rule 77.3 provides in part that:

"Comments shall focus on factual, legal or technical errors in the proposed decision and in citing such errors shall make specific references to the record. Comments which merely reargue positions taken in briefs will be accorded no weight and are not to be filed."

The filings by SoCal urge the Commission to adopt the ALJ's proposed decision and need not be discussed.

The Commission is of the opinion that the findings and conclusions of the ALJ are correct.

No other points require discussion.

Findings of Fact

1. Allied is a corporation. Hunt is a black American who owns all of the common stock of Allied. Hunt is the president and

chief executive officer of Allied, which qualifies as a WMBE as defined in PU Code § 8282 and GO 156.

2. SoCal is a gas utility whose gross annual revenues exceed \$25,000,000 and is within the purview of PU Code § 8283 and § 1.1.1 of GO 156.

3. Since 1985 SoCal has had an annual growth rate of 20% per year in its utilization of women and minority-owned firms. The following table sets forth SoCal's 1989 WMBE goals and results and its 1990 WMBE goals:

**SOUTHERN CALIFORNIA GAS COMPANY
WOMEN AND MINORITY BUSINESS ENTERPRISES PROGRAM**

**1989 WMBE Goals/Results and 1990 WMBE Goals
By Ethnic/Gender Group**

<u>Category</u>	<u>1989 Goals</u>	<u>1989 Results</u>	<u>1990 Goals</u>
WMBE	12.11%	14.39%	15.75%
WBE	4.41%	6.51%	5.00%
MBE	7.70%	7.88%	10.75%

Ethnic/Gender Classifications

MBE (Male)	N/A	6.87%	8.75%
MBE (Female)	N/A	1.01%	2.00%
Asians	1.20%	0.97%	1.51%
Male	N/A	0.91%	1.23%
Female	N/A	0.06%	0.28%
Blacks	3.14%	2.96%	4.64%
Male	N/A	2.89%	3.92%
Female	N/A	0.07%	0.72%
Hispanics	2.17%	2.16%	3.38%
Male	N/A	1.94%	2.64%
Female	N/A	0.22%	0.74%
Native Americans	0.68%	0.45%	0.72%
Male	N/A	0.43%	0.59%
Female	N/A	0.02%	0.13%
Other Minorities	0.51%	0.33%	0.50%
Male	N/A	0.28%	0.37%
Female	N/A	0.05%	0.13%

N/A - 1989 Goal was not established.

4. Virginia Allen served as SoCal's minority and small business manager from March of 1984 to April of 1990. When the Clearing House Advisory Board (GO 156, § 3.3) was established in June 1988, Allen was elected as its chair. She was reelected in 1990. Joyce Ridley-Scott was, at the time of the events here under consideration, a manager in SoCal's Human Resources Department. Her responsibilities included directing and managing the

administration of SoCal's nonmanagement placement and hiring process, employment, affirmative action programs, and temporary personnel services contracts. In April of 1990, Ridley-Scott was the recipient of a resolution authored by Assemblywoman Moore and passed by the California Assembly which commended Ridley-Scott for her outstanding achievements in the area of WMBE utilization.

From 1986 through 1989, SoCal received the top corporate honor or top corporate award from each of the minority business associations that are active in the Southern California community; namely, the Asian Business Association, the Black Business Association, the Latin Business Association, the National Association of WMBE Owners, and the National Center for American Indian Enterprise Development. SoCal has also received awards from the Association of Black Women Entrepreneurs.

5. On September 1, 1989, SoCal sent an Invitation to Bid requesting bid proposals for a two-year period beginning January 2, 1990 for contract personnel to perform various types of work including temporary office personnel. In years past, SoCal had utilized five contractors to provide these services. To comply with GO 156 it expanded the number to 15 contractors. SoCal sent the Invitation to Bid to 307 firms of which 58 were WMBEs. It received 82 responses of which 47 were from WMBEs.

6. The Invitation to Bid contained the following:

"It is anticipated our dollar volume for temporary help will exceed \$5,000,000 annually in 1990 and 1991. Fifteen agencies will be awarded contracts, and the awarding of the contracts will be based upon the criteria described below:

"o Ability to provide prompt, efficient service at the most advantageous rates to our Company.

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territory and meet our needs on a continual basis.

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7. The Rule of Thumb is neutral as to gender, minority status, or size of business. The actual award of the 15 contracts indicates it did not have a discriminatory result; 13% were awarded

to minority-owned businesses; 33% to women-owned businesses, and 60% to small businesses.

8. It was not necessary for SoCal to include in the Invitation to Bid its in-house considerations for evaluating how tendered bids met the criteria set forth in the invitation.

9. Allied was not prejudiced in the awarding of the 15 contracts by the Rule of Thumb. At the time it tendered its bid, Allied had only one office in the areas specified in the invitation. That office was located on Wilshire Boulevard in Los Angeles. Allied was aware at the time it filed its bid of the ability to serve multiple locations criteria. Allied mailed its bid response to SoCal on September 11, 1989. On the same day it sent a letter to SoCal's Employment Services Supervisor, which contained the following text:

"Subject: New Allied Offices

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"Sincerely,

/s/ Clarence A. Hunt, Jr.

Clarence A. Hunt, Jr.
President"

None of these proposed offices was ever opened. The plan to open new offices was contingent upon receiving a contract.

10. In ranking the bids to determine the 15 contracts to be awarded, SoCal could properly give more weight to firms having existing offices proximate to the areas to be served.

11. On or about November 3, 1989, SoCal selected 15 of the bidders to provide the services. Allied was not selected for a

contract. Of the 15 selected, 13% were minority-owned businesses, 33% were women-owned businesses, and 60% were small businesses. SoCal rated Allied 22nd among the 82 bidders.

12. On November 3, 1989, SoCal sent Allied a letter which notified Allied that it was not selected as one of the contract providers. On November 7, 1989, Hunt sent a letter for Allied which requested an internal appeal of the rejected bid pursuant to GO 156. The letter also stated that: "Additionally, it is our belief that your bidding process violated AB 3678 and GO #156 thereby discriminating against minority vendors." At this time Allied did not know the identities of the successful bidders and how many of them were WMBEs. On December 6, 1989, SoCal responded to Hunt's letter. Allied sent to SoCal a letter on December 18, 1989, indicating it considered SoCal's response of December 6 to be insufficient and requested SoCal furnish it with a written bid recap of each of the 15 selected vendors. The letter was received by SoCal on December 27, 1989, and responded to on December 29, 1989. The response indicated that the information could not be provided by December 28, 1989, as requested. On January 9, 1990, Hunt wrote SoCal that he had received no response to the December 18 letter. On January 29, 1990, SoCal sent a letter to Hunt which contained a recap of the 15 bids for which contracts were awarded. A meeting was had on February 14, 1990 between Hunt and representatives of SoCal. On February 15, 1990, Hunt sent a letter to SoCal which included his version of the meeting and demanding that SoCal immediately award Allied a contract to provide it temporary clerical services. On January 31, 1990, Hunt sent a letter to the chief executive officer of SoCal which requested another internal appeal. No action was taken on this request.

13. SoCal does not use a competitive bidding process for obtaining temporary programming services, which are utilized by the Information Systems Department. The reason it considers competitive bidding inappropriate is that it considers skill and

experience more important than cost, although cost is a consideration. Selection of temporary programmers is made by the manager or supervisor who has need for the services. All of these managers and supervisors have received training in SoCal's WMBE procurement program. The Information Systems Department has a WMBE coordinator. It has conducted WMBE outreach activities, including forums and seminars to identify potential WMBE vendors. The Information Systems Department maintains a list of qualified vendors of temporary programmers. Steps are taken to include WMBE firms on the list. Vendors are continuously added to the list. At the time of hearing there were 74 firms on the list of which 34% were WMBEs. In the 12 months prior to the hearing, the Information Systems Department used 33 of the 74 firms on the list and 36% of the 33 firms were WMBEs.

14. There is no evidence in the record which would support a finding that Allied was not awarded one of the 15 contracts because Hunt is a black American businessman.

15. GO 156 does not require a competitive bidding procedure in the award of all contracts by the utilities subject to its provisions.

16. GO 156 does not require a pre-bid conference as part of the contract award process.

17. Allied's request that its attorney and WMBE Advocates, Inc. be found eligible to receive attorney's fees does not meet the requirements of § 1.3 of the Advocates Trust Fund of the California Public Utilities Commission.

18. The presiding ALJ was not biased or prejudiced against Hunt or Allied.

Conclusions of Law

1. Allied's failure to receive a contract from SoCal to provide temporary office personnel was not due to racial discrimination.

2. SoCal did not violate PU Code § 453 or GO 156 in the award of the 15 contracts for temporary office personnel services on or about November 3, 1989.

3. SoCal did not violate GO 156 in the handling of Allied's request for an internal appeal.

4. GO 156 does not require a competitive bidding process in the award of all contracts by utilities.

5. GO 156 does not require a pre-bid conference as part of a utility's contract award process.

6. SoCal's procedure for awarding contracts for temporary programming services does not violate GO 156.

7. Allied's request that its attorney and WMBE Advocates, Inc. be found eligible for attorney's fees should be denied.

8. Allied should be granted no relief in this proceeding.

O R D E R

IT IS ORDERED that complainant is entitled to no relief in this proceeding and the complaint is denied.

This order becomes effective 30 days from today.

Dated May 8, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
G. MITCHELL WILK
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY

NEEL I. SHARMA, Executive Director
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