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Decision 91-06-024 June 5, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Allied Temporaries,)
)
 Complainant,)
)
 vs.)
)
 Pacific Bell (U 1001 C),)
)
 Defendant.)

ORIGINAL

Case 90-03-035
(Filed March 26, 1990)

Walter Cook, Attorney at Law, of the Law
Offices of Joseph D. O'Sullivan, and
Clarence Hunt and WMBE Associates,
Inc., for Allied Temporaries, Inc.,
complainant.

Mary Vanderpan and Maribeth R. Harper,
Attorneys at Law, for Pacific Bell,
defendant.

O P I N I O N

This is a complaint by Allied Temporaries, Incorporated (Allied) against Pacific Bell (PacBell). Allied alleges that PacBell, by not using a system of formal competitive bidding in awarding contracts for temporary clerical and temporary programming services, has violated §§ 453 and 8281 of the Public Utilities (PU) Code and General Order (GO) 156. In addition, Allied alleges that PacBell also violated PU Code §§ 453 and 8281, and GO 156 by terminating a contract with Allied for temporary clerical services, and that PacBell violated § 4.4 of GO 156 dealing with appeals. PacBell denies all of the allegations in the complaint.

A duly noticed public hearing was held in this matter before Administrative Law Judge Donald B. Jarvis in San Francisco

on August 20 and 21, 1990. The proceeding was submitted subject to the filing of transcript and briefs, which have been filed.

Allied filed a First Amended Complaint and a Second Amended Complaint, which were dismissed without prejudice prior to the hearing. The hearing proceeded on the original complaint. At the hearing, Allied withdrew the allegations in paragraph 10 of the original complaint which stated that:

"10. Despite the fact that ALLIED was a former responsive and competitive vendor, PacBell, on and after July 14, 1989, arbitrarily discriminated against ALLIED, and rejected each of ALLIED's request for contract in violation of the equal protection clause of the California Constitution, Article 1/7 or PUC section 453 on the basis that its President is a Black-American businessman;..."

1. Material Issues

The material issues presented in this matter are:

(1) Did PacBell violate any provision of law or rule of the Commission by terminating its contract with Allied; (2) Do PU Code §§ 453, 8281, and GO 156 require PacBell to use a competitive bidding process for all of its procurement; (3) Did PacBell violate § 4.4 of GO 156.

2. Background

In 1986 the Legislature enacted PU Code §§ 8281 et seq. which states these 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 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.

Prior to 1989 PacBell procured temporary clerical services by entering into company-wide master contracts with a number of vendors. A PacBell unit needing temporary clerical services would select one of the vendors having a master contract and execute a work order for that firm which would reference the terms of the master contract. Vendors were not guaranteed any specific amount of business under the master contracts.

On July 29, 1985, PacBell entered into master contracts with 70 vendors of temporary clerical services for a term of three years. Allied was one of the 70 vendors.

In 1987, PacBell made an internal audit of temporary clerical expense. After the audit, PacBell decided to go to a decentralized system of procuring temporary clerical services. There were several reasons for the proposed change. The centralized system was considered to be inefficient and wasteful. Decentralization was thought to provide more flexibility for local needs and provide for quality control. Decentralization was perceived to be a way to have greater WMBE participation in the awarding of contracts.

The July 1985 master contracts were, by their terms, due to expire on July 28, 1988. PacBell was still working on implementing the decentralized program at that time. On August 5, 1988, PacBell notified all 70 vendors of the master

contracts that if they wished to participate in the new program, their master contract would be extended until it was implemented. Allied's master contract was extended under this offering. One of the 70 vendors went out of business. On July 14, 1989, PacBell sent a letter to the remaining 69 vendors terminating their extended master contracts as of November 12, 1989. During the period of the 1985 master contracts, as extended, Allied received about \$35,000 in business from PacBell.

On November 12, 1989, PacBell instituted the decentralized system for obtaining temporary clerical services. Under the decentralized system, each unit within PacBell has a person who is authorized by the manager of the unit to obtain temporary clerical personnel, if required. The title of this person varies from unit to unit. PacBell has a WMBE coordinator in each department. These coordinators train and work with the procurement personnel in their departments. In addition, the PacBell director of minority and women business operations and her staff work directly with many department procurement personnel to educate them about PacBell's policy to increase WMBE utilization.

PacBell has a data base of vendors by types of services offered which includes temporary clerical services. WMBEs, which are identified by category, are included in the data base. At first, the data base was distributed monthly in a printed form. However, because of a large volume of deletions and additions, it was not current when distributed. PacBell presently maintains it in a computer where it is continuously updated. A procurement person can access the data base on the computer or get a printout of the portion of interest.

A procurement person seeking to obtain temporary clerical services would access the firms in the data base for the city or geographical area in which the services were needed. The person, keeping in mind WMBE policy, would select a group of vendors from the data base. The procurement person would contact each of the

group of vendors to ascertain whether the vendor had personnel with the skills necessary for the particular project and the price to be charged. The procurement person then selects a vendor and executes a contract on a standard form provided by PacBell.

During the period from 1985 to date, PacBell did not use a competitive bidding system in awarding computer programming contracts. These contracts were let under a decentralized system.

PacBell's overall use of WMBEs for all temporary services was 16.29% of the value of contracts awarded in 1987 and 76.30% in 1989. For temporary clerical services, the percentages were 34.31% in 1987 and 65.72% in 1989. For temporary computer programming, the percentages were 21.51% in 1987 and 92.69% in 1989.

On February 5, 1990, Allied wrote a letter to PacBell, which contained the following:

"Re: Request for Internal Appeal via PUC-GO#156

"Dear Mr. Hancock:

"Our firm has been denied a contract by PacBell in the provision of Temporary Clerical/ Secretarial Personnel Services. The basis of this denial is racial and sexual discrimination which is a violation of PUC-GO#156.

"Therefore we are requesting that an Internal Appeal be scheduled pursuant to the above referenced PUC-GO#156 within 20 days from the date of this letter.

"I can be reached at (415) 543-9049 to confirm a satisfactory hearing date.

"Sincerely,

"/s/ Clarence Hunt
" Clarence Hunt
President"

PacBell's director of minority and women business enterprise operations responded to the letter by telephoning Hunt to set up a

meeting. Hunt indicated he would be out of town for two to three weeks and not available for a meeting during that period. He agreed to a meeting at a later date. Subsequently, a meeting was scheduled for and held on March 6, 1990. On or about March 14, 1990, Hunt sent a letter to PacBell referencing the meeting which contended that PacBell was in violation of GO 156 because it was not using formal competitive bidding in procuring temporary clerical and programming services. PacBell was preparing a response to the March 14th letter when this complaint was filed on March 26, 1990. On advice of counsel, PacBell did not respond to the March 14th letter.

3. Discussion

3.1. Termination of the 1985 Master Contracts

The 70 master contracts for temporary clerical services were entered into on July 29, 1985. They were for a period of three years. By their own terms they were to expire on July 28, 1988. PacBell voluntarily extended the contracts until November 12, 1989, when its decentralized system for procuring temporary clerical services was implemented. On July 14, 1989, PacBell sent a letter to each of the remaining 69 vendors notifying them of the termination of their master contracts on November 12, 1989.

PacBell had no duty to continue the master contracts beyond November 12, 1989. In terminating the master contracts PacBell did not treat Allied differently than any of the other 68 vendors. PacBell did not violate PU Code §§ 453, 8281, or GO 156 in terminating the master contracts.

3.2 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 utilize 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 that:

"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 formal bidding procedure, a utility cannot comply with the section; hence, formal 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.

Allied also asserts that formal competitive bidding is 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 defendant PG&E had used a competitive bidding process. 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, in connection with its competitive bidding process.

Allied v. PG&E rests on the facts presented in that case. It does not mandate competitive bidding for all utilities in their processes in awarding all contracts. It is not controlling in this proceeding.

3.3 Did PacBell Violate § 4.4 of GO 156?

Allied contends that PacBell violated § 4.4 of GO 156, which provides that:

"4.4 Internal Utility Appeals Process

"Each utility shall provide a mechanism through which WMBE contractors or prospective WMBE contractors can present complaints to the utility's management.

"4.4.1 Complaints shall first be submitted to a WMBE program administrator within a reasonable time after the event complained of. WMBEs should be encouraged to make their complaints in writing;

"4.4.2 Complaints shall be reviewed and investigated by the administrator and the administrator's decision communicated to the complainant within twenty (20) working days of receipt of the complaint;..."

As indicated, Allied sent a letter to PacBell on February 5, 1990 requesting an internal appeal about this matter. On February 16, 1990 PacBell's director of minority and women business enterprise operations talked with Hunt on the telephone. Hunt indicated that he would be out of town for two to three weeks and not available for a meeting during that period. He agreed to a meeting at a later date. This constituted a waiver by Allied of the 20 working day response requirement of § 4.4.2. Thereafter, a meeting was scheduled for and held on March 6, 1990. On or about March 14, 1990, Hunt sent a letter to PacBell referencing the meeting which contended that PacBell was in violation of GO 156 because it was not using formal competitive bidding in procuring temporary clerical and programming services. PacBell was preparing a response to the March 14th letter when this complaint was filed on March 26, 1990. On advice of counsel, PacBell did not respond to the March 14th letter. The Commission takes official notice that a period of 20 working days from March 6, 1990 would have ended on April 3, 1990.

Under the facts presented in this case, PacBell did not violate § 4.4 of GO 156.

4. 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. PacBell filed a response opposing the request.

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."

The Trust provides in part 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."

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. The request for eligibility will be denied.

5. Comments

The ALJ filed his proposed decision on April 29, 1991 and it was mailed on that date. No comments were filed by Allied. On May 20, 1991, PacBell filed comments which urged adoption of the proposed decision. Allied did not reply to the comments filed by PacBell. No discussion of the comments is necessary.

No other points require discussion. The Commission makes the following findings and conclusions.

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. PacBell is a telephone corporation 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. Prior to 1989 PacBell procured temporary clerical services by entering into company-wide master contracts with a number of vendors. A PacBell unit needing temporary clerical services would select one of the vendors having a master contract and execute a work order for that firm which would reference the terms of the master contract. Vendors were not guaranteed any specific amount of business under the master contracts.

4. On July 29, 1985, PacBell entered into master contracts with 70 vendors of temporary clerical services for a term of three years. Allied was one of the 70 vendors.

5. In 1987 PacBell did an internal audit of temporary clerical expense. After the audit, PacBell decided to go to a decentralized system of procuring temporary clerical services. There were several reasons for the proposed change:

- a. The centralized system was considered to be cumbersome, insufficient and wasteful. It was necessary for PacBell personnel needing temporary clerical services to contact a centralized contract administrator to find

the names of vendors having contracts and the terms and prices contained in the contracts. It was necessary for the persons needing the service to check with the contract administrator to be sure the terms of the work order they submitted conformed to the provisions of the selected vendor's master contract.

- b. It was difficult for the central contract administrator to judge the quality of service rendered because he or she did not observe the performance of the service.
- c. The master contracts utilized broad categories, such as typist. Because of changes in technology, local needs focused on the need for services with expertise in different computer software. It was easier to determine these needs locally on a project-by-project basis.
- d. Decentralization was perceived to be a way to have greater WMBE participation in the awarding of contracts.

Under the centralized system a fixed number of vendors had master contracts for a period of years. The number of WMBEs among the group of vendors receiving master contracts was static for the period of the contract. Under a decentralized system WMBEs could be continuously added to the pool of vendors which could be utilized.

6. The July 1985 master contracts were, by their terms, due to expire on July 28, 1988. PacBell was still working on implementing the decentralized program at that time. On August 5, 1988, PacBell notified all 70 vendors of the master contracts that if they wished to participate in the new program, their master contract would be extended until it was implemented. Allied's master contract was extended under this offering. One of the 70 vendors went out of business. On July 14, 1989, PacBell sent a letter to the remaining 69 vendors terminating their extended master contracts as of November 12, 1989. During the period of the

1985 master contracts, as extended, Allied received about \$35,000 in business from PacBell.

7. On November 12, 1989, PacBell instituted the decentralized system for obtaining temporary clerical services. Under the decentralized system each unit within PacBell has a person, who is authorized by the manager of the unit, to obtain temporary clerical personnel, if required. The title of this person varies from unit to unit. PacBell has a WMBE coordinator in each department. These coordinators train and work with the procurement personnel in their departments. In addition, the PacBell director of minority and women business operations and her staff work directly with many department procurement personnel to educate them about PacBell's policy to increase WMBE utilization.

8. PacBell has a data base of vendors by types of services offered which includes temporary clerical services. WMBEs, which are identified by category, are included in the data base. At first, the data base was distributed monthly in a printed form. However, because of a large volume of deletions and additions, it was not current when distributed. PacBell presently maintains it in a computer where it is continuously updated. A procurement person can access the data base on the computer or get a printout of the portion of interest.

A procurement person seeking to obtain temporary clerical services would access the firms in the data base for the city or geographical area in which the services were needed. The person keeping in mind WMBE policy would select a group of vendors from the data base. The procurement person would contact each of the group of vendors to ascertain whether the vendor had personnel with the skills necessary for the particular project and the price to be charged. The procurement person would then select a vendor and execute a contract on a standard form provided by PacBell.

9. During the period from 1985 to date, PacBell did not use a competitive bidding system in awarding computer programming contracts. These contracts were let under a decentralized system.

10. The following tables set forth PacBell's utilization of WMBEs in the categories listed including temporary clerical and temporary computer programs for the years 1987 and 1989:

1987

		Comp Prog (PSC 0213)			Temp Cler (PSC 4109)			Empl Agency (PSC 9004)			GRAND TOTAL		
		#	\$	%	#	\$	%	#	\$	%	#	\$	%
Polynesian	Male	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
	Female	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
	TOTAL	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
Filipino	Male	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
	Female	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
	TOTAL	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
Hispanic	Male	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
	Female	1	\$35,539	1.64%	1	\$17,814	0.17%	0	\$0	0.00%	2	\$53,354	0.18%
	TOTAL	1	\$35,539	1.64%	1	\$17,814	0.17%	0	\$0	0.00%	2	\$53,354	0.18%
Black	Male	2	\$16,816	0.78%	2	\$38,773	0.37%	0	\$0	0.00%	4	\$55,589	0.19%
	Female	1	\$8,030	0.37%	3	\$25,512	0.24%	1	\$11,475	0.07%	5	\$45,017	0.15%
	TOTAL	3	\$24,846	1.15%	5	\$64,286	0.62%	1	\$11,475	0.07%	9	\$100,607	0.34%
Asian	Male	1	\$78,193	3.61%	0	\$0	0.00%	0	\$0	0.00%	1	\$78,193	0.26%
	Female	2	\$3,569	0.16%	0	\$0	0.00%	0	\$0	0.00%	2	\$3,569	0.01%
	TOTAL	3	\$81,764	3.78%	0	\$0	0.00%	0	\$0	0.00%	3	\$81,764	0.28%
Native American	Male	1	\$3,365	0.16%	0	\$0	0.00%	0	\$0	0.00%	1	\$3,365	0.01%
	Female	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
	TOTAL	1	\$3,365	0.16%	0	\$0	0.00%	0	\$0	0.00%	1	\$3,365	0.01%
Multi Ethnic	Male	0	\$0	0.00%	2	\$5,341	0.05%	0	\$0	0.00%	2	\$5,341	0.02%
	Female	1	\$50	0.00%	0	\$0	0.00%	0	\$0	0.00%	1	\$50	0.00%
	TOTAL	1	\$50	0.00%	2	\$5,341	0.05%	0	\$0	0.00%	3	\$5,391	0.02%
TOTAL MBE	Male	4	\$98,376	4.54%	4	\$44,115	0.42%	0	\$0	0.00%	8	\$142,491	0.48%
	Female	5	\$47,189	2.18%	4	\$43,327	0.41%	1	\$11,475	0.07%	10	\$101,990	0.35%
	TOTAL	9	\$145,565	6.72%	8	\$87,442	0.84%	1	\$11,475	0.07%	18	\$244,481	0.83%
Caucasian	Female	13	\$385,289	17.79%	43	\$3,496,961	33.47%	7	\$686,208	4.05%	63	\$4,568,458	15.46%
TOTAL MWBE		22	\$530,854	24.51%	51	\$3,584,403	34.31%	8	\$697,683	4.12%	81	\$4,812,940	16.29%
Non-MWBE		17	\$1,634,780	75.49%	74	\$6,862,338	65.69%	21	\$16,244,190	95.88%	112	\$24,741,309	83.71%
GRAND TOTAL		39	\$2,165,635	100.00%	125	\$10,446,741	100.00%	29	\$16,941,873	100.00%	193	\$29,554,248	100.00%

1989

		Comp Prog (PSC 0213)			Temp Cler (PSC 4109)			Empl Agency (PSC 9004)			GRAND TOTAL		
		#	\$	%	#	\$	%	#	\$	%	#	\$	%
Polynesian	Male	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
	Female	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
	TOTAL	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
Filipino	Male	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
	Female	0	\$0	0.00%	3	\$236,261	1.80%	0	\$0	0.00%	3	\$236,261	1.05%
	TOTAL	0	\$0	0.00%	3	\$236,261	1.80%	0	\$0	0.00%	3	\$236,261	1.05%
Hispanic	Male	1	\$379,493	4.31%	1	\$366,298	2.64%	0	\$0	0.00%	2	\$725,791	3.23%
	Female	1	\$16,932	0.19%	1	\$9,870	0.08%	0	\$0	0.00%	2	\$26,802	0.12%
	TOTAL	2	\$396,425	4.51%	2	\$356,168	2.71%	0	\$0	0.00%	4	\$752,593	3.35%
Black	Male	8	\$5,942,941	67.55%	3	\$363,438	2.77%	1	\$16,250	3.08%	12	\$6,322,629	28.15%
	Female	4	\$1,245,128	14.15%	6	\$168,211	1.28%	0	\$0	0.00%	10	\$1,413,339	6.29%
	TOTAL	12	\$7,188,070	81.70%	9	\$531,648	4.05%	1	\$16,250	3.08%	22	\$7,735,968	34.44%
Asian	Male	1	\$227,764	2.59%	0	\$0	0.00%	0	\$0	0.00%	1	\$227,764	1.01%
	Female	0	\$0	0.00%	4	\$72,201	0.55%	0	\$0	0.00%	4	\$72,201	0.32%
	TOTAL	1	\$227,764	2.59%	4	\$72,201	0.55%	0	\$0	0.00%	5	\$299,965	1.34%
Native American	Male	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%	0	\$0	0.00%
	Female	0	\$0	0.00%	2	\$88,445	0.67%	0	\$0	0.00%	2	\$88,445	0.39%
	TOTAL	0	\$0	0.00%	2	\$88,445	0.67%	0	\$0	0.00%	2	\$88,445	0.39%
Other Ethnic	Male	0	\$0	0.00%	3	\$799	0.01%	0	\$0	0.00%	3	\$799	0.00%
	Female	0	\$0	0.00%	1	\$46,438	0.35%	0	\$0	0.00%	1	\$46,438	0.21%
	TOTAL	0	\$0	0.00%	4	\$47,236	0.36%	0	\$0	0.00%	4	\$47,236	0.21%
TOTAL MBE	Male	10	\$6,550,198	74.45%	7	\$710,534	5.41%	1	\$16,250	3.08%	18	\$7,276,982	32.30%
	Female	5	\$1,262,060	14.34%	17	\$621,425	4.73%	0	\$0	0.00%	22	\$1,883,485	8.38%
	TOTAL	15	\$7,812,258	88.79%	24	\$1,331,959	10.14%	1	\$16,250	3.08%	40	\$9,160,467	40.70%
Caucasian	Female	17	\$343,328	3.90%	49	\$7,302,333	55.58%	7	\$335,162	65.50%	73	\$7,980,822	35.53%
TOTAL MWBE		32	\$8,155,586	92.69%	73	\$8,634,292	65.72%	8	\$351,412	66.58%	113	\$17,141,290	76.30%
Non-MWBE		13	\$642,853	7.31%	47	\$4,503,640	34.28%	7	\$176,393	33.42%	67	\$5,322,833	23.70%
GRAND TOTAL		45	\$8,798,441	100.00%	120	\$13,137,932	100.00%	15	\$527,805	100.00%	180	\$22,464,178	100.00%

11. On February 5, 1990, Allied wrote a letter to PacBell, which contained the following:

"Re: Request for Internal Appeal via PUC-GO#156

"Dear Mr. Hancock:

"Our firm has been denied a contract by PacBell in the provision of Temporary Clerical/Secretarial Personnel Services. The basis of this denial is racial and sexual discrimination which is a violation of PUC-GO#156.

"Therefore we are requesting that an Internal Appeal be scheduled pursuant to the above referenced PUC-GO#156 within 20 days from the date of this letter.

"I can be reached at (415) 543-9049 to confirm a satisfactory hearing date.

"Sincerely,

"/s/ Clarence Hunt
" Clarence Hunt
President"

12. On February 16, 1990, PacBell's director of minority and women business enterprise operations talked with Hunt on the telephone. Hunt indicated that he would be out of town for two to three weeks and not available for a meeting during that period. He agreed to a meeting at a later date. This constituted a waiver by Allied of the 20 working day response requirement of § 4.4.2. Thereafter, a meeting was scheduled for and held on March 6, 1990. On or about March 14, 1990, Hunt sent a letter to PacBell referencing the meeting which contended that PacBell was in violation of GO 156 because it was not using formal competitive bidding in procuring temporary clerical and programming services. PacBell was preparing a response to the March 14th letter when the complaint at bench was filed on March 26, 1990. On advice of counsel, PacBell did not respond to the March 14th letter.

13. Twenty working days from March 6, 1990 would have ended on April 3, 1990.

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

15. PacBell did not violate PU Code §§ 453 or 8281 or GO 156 when it terminated all of the extended master contracts on November 12, 1989.

16. 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.

Conclusions of Law

1. PacBell did not violate PU Code §§ 453 or 8281 or GO 156 when it terminated the extended master contracts on November 12, 1989.

2. PU Code §§ 453, 8281, and GO 156 do not require a competitive bidding process in the award of all contracts by utilities.

3. PacBell's procedures for awarding contracts for temporary clerical services and for temporary programming services do not violate PU Code §§ 453 or 8281 or GO 156.

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

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

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

ORDER

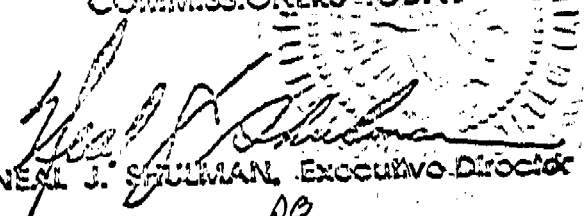
IT IS ORDERED that complainant is entitled to no relief in this proceeding and the complaint is denied.

This order becomes effective 30 days from today.

Dated June 5, 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


NEIL J. SHULMAN, Executive Director
AB