

DATE ISSUED: November 13, 2000

REPORT NO. 00-252

ATTENTION: Honorable Mayor and City Council

SUBJECT: Equal Opportunity Program Contractor/Subcontractor Participation Data

SUMMARY

THIS IS AN INFORMATIONAL REPORT ONLY. NO ACTION IS REQUIRED ON THE PART OF THE CITY COUNCIL.

BACKGROUND

The Equal Opportunity Contracting Program (EOCP) provides the Mayor and City Council with regular reports on the status of the program and contractor participation levels. On October 2, 2000, upon delivering the bi-annual report for the first half of fiscal year 2000 (CMR 00-112), questions were raised regarding the type of data collected and its context. Data was presented on the number of firms receiving construction contract awards - at both the general and subcontractor levels - by race; and the collective awards, in dollars, for each racial group. Data was also presented on the number of CalTrans certified contractors, by race, for comparison and as a means of providing statistical relevance. In response, direction was given to staff to provide an enhanced level of data: statistical data on all bidders at both the general and subcontractor levels.

For more than 15 years, EOCP, has worked to ensure fair and equal access to City of San Diego contracting opportunities. The manner and extent to which EOCP has been able to carry out this basic mission has been effected over the years by court cases, legislation and Council direction. Efforts to increase the ability of EOCP to effect change have included introduction of mandatory M/WBE goals and introduction of the Non-Discrimination Ordinance. Setbacks to the program include a successful legal challenge waged against the City and the passage of Proposition 209 which prevents implementation of programs designed to give preference based on race and/or gender. The history and effect of many of the changes to the program are discussed in detail in City Attorney Opinions 96-2 and 97-2 (Attachments).

Key milestones in the program include:

February, 1972	Council adopted resolution R-274843, an affirmative action program for contractors doing business with the City of San Diego
March 4, 1985	Council adopted resolution R-262633, a voluntary minority and women owned business enterprise program for EOCP with goals of 15% MBE and 5% WBE
February 22, 1988	Council increased the goals to 20% MBE and 7% WBE
1991	EOCP began recommending the rejection of all bids when the apparent low bidder failed to reach the M/WBE goals or had not made a good faith effort to do so
August 3, 1992	Council voted in concept to commission a predicate-disparity study
August, 1993	The Association of General Contractors (AGC) filed for declaratory

	judgement and injunctive relief against the City's M/WBE program
September 30, 1993	U.S. District Court issues injunction
November 29, 1993	Council rescinded Resolution R-262633 (adopted March 4, 1985) Council awarded predicate-disparity study contract to DEGA/TMS
November 5, 1996	Proposition 209, the California Civil Rights Initiative passes
April 23, 1998	Public Safety and Neighborhood Services (PS&NS) Committee receives predicate-disparity study
June, 1998	Full Council receives and accepts predicate-disparity study and approves the formation of an investigative unit to address specific allegations of discrimination in contracting
March 6, 2000	Council adopts the Non-Discrimination in Contracting Ordinance and the Subcontractor Outreach Program

DISCUSSION

Data presented here is for the period Fiscal Year 1998 through Fiscal Year 2000 (July 1, 1997 through June 30, 2000). EOCP retains information related to the lowest responsible bidders receiving contract awards. Lowest responsible bidder is defined as that bidder having the lowest dollar bid while also complying with other Federal, State and City imposed regulations such as bonding, insurance and EOCP requirements.

For this period, the City did not have the authority to request and collect information on all subcontractors submitting bids to prime contractors, only those selected by the prime contractor

as part of their bid. The Public Contracting Code requires general contractors to list all proposed subcontractors that will receive greater than one half of one percent (0.5%) of the total bid amount. There were no other contractual requirements to provide data beyond the requirement of the Public Contracting Code. In the opinion of the City Attorney's Office, data related to sub bidders (verses listed subcontractors) was proprietary and EOCP had no right to such information. As a result, EOCP did not have ready access to subcontractor bidder data or selected subcontractors receiving less than one half of one percent of the contract amount. Thus, the information provided here summarizes the distribution of contractors both bidding and receiving awards at the prime contractor level (primes) and the listed - successful subcontractors for each of those firms.

PRIME BIDDERS

During this review period, there were 2,004 bidders at the prime level. Of the 2,004 bidders, there were 367 low, responsible bidders. A comparison of total bids received to the number of contracts awarded shows that non DBE firms bid significantly more often than certified Disadvantaged Business Enterprise (DBE) and Disabled Veteran Business Enterprise (DVBE) firms. While a small number of bids were received from them, African American and Asian firms were successful on 30% or more of their bids. Of the various categories, White Women and Disabled Veterans won the fewest awards with a 9.18% and 5% success rate respectively.

SUCCESS RATE OF PRIMES			
	# Bidders	# of Contracts Awarded	Percentage Successful
African American	10	3	30.00%
Asian	3	1	33.33%
Latino	171	34	19.88%
White Women	98	9	9.18%
Total DBE	282	47	16.66%
Disabled Vets (DVBE)	20	1	5.00%
Non DBE	1702	319	18.74%
TOTAL	2,004	367	

SUBCONTRACTORS

The only data available at the subcontractor level for this period is that of subcontractors listed by the prime contractor in bid documents. This data shows that Disabled Veteran is the only D/DVBE category to appear on teams receiving contract awards greater than 25% of the time. While there is a great deal of variance between categories in terms of how often they are listed as subcontractors by primes, there is little differentiation in how often they are listed by low, responsible bidders, receiving the contract award with an average of 17.32%.

SUCCESS RATE OF SUBCONTRACTORS			
	Total # of Listed Subcontractors	# of Subcontractors on Winning Bids	Percentage Successful
African American	35	6	17.14%
American Indian	19	2	10.52%
Asian	44	7	15.90%
Filipino	1	0	0
Latino	488	80	16.39%

White Women	346	67	19.36%
Disadvantaged Other	2	0	0
Total DBE	935	162	17.32%
Disabled Vets (DVBE)	49	13	26.5%
Non DBE	4,583	723	15.77%
TOTAL	5,567	898	

SUBCONTRACTOR OUTREACH PROGRAM

The data above reflects participation levels achieved while the City acted under a voluntary subcontractor program. The Subcontractor Outreach Program (SCOP) approved by the City Council on March 6, 2000, was developed in reaction to Proposition 209 and completion of the City's Disparity Study. Proposition 209 prohibits implementation of programs that give economic preference to any group based on race and/or gender. At the same time, the Disparity Study revealed a marked decrease in participation of minority contractors after the enjoinder of the mandatory M/WBE program in 1993. SCOP is a program designed to address the issues raised in the Disparity Study in a manner that complies with the legal restrictions of Proposition 209. In addition, SCOP provides authority to collect data on subcontractor bids submitted to prime contractors not included in the bid submittals.

Since the approval of the SCOP, two applicable projects have advertised and completed the bid opening process. Two of this program are mandatory subcontractor participation levels and submission of all subcontractor bid lists - key data absent from the previous program model - in addition to the list of chosen subcontractors. The three low bidders are required to submit this data in addition to other required information. City Council granted the authority to collect this data as a means of determining whether contractors made a good faith effort to conduct outreach in a fair, non-discriminatory manner.

The first project was Friars Road/Mission Center Road Corridor Improvements. The three low bidders on this project are all non-certified firms. The first and third low bidders submitted the required documentation. While all three bidders achieved the minimum level of subcontractor participation required (8%), neither the first nor the third low bidder submitted documentation sufficient to comply with the good faith requirement. As a result, both bids were rejected.

A review of the subcontractor bid data for the first and the third low bidders show that a total of 13 subcontractor bids were received. Of those subcontractors, two (2) were from Latinos and one (1) was from a White Woman. The first low bidder accepted and listed in the required bid documents one subcontractor: a firm owned by a White Woman.

The second project was the Catalina Trunk Sewer. The first low bidder is a Latino owned firm. Again, documentation was received from the first and third low bidders. The first low bidder achieved the 25% subcontractor participation level and met the good faith requirement of the outreach component of the program. As a result, the bid was deemed responsible and authorization was granted to proceed with the award.

For this project, there were a total of 36 subcontractor bids submitted to the two responsive prime bidders. Five (5) of these subcontractor bids were from certified contractors. The low bidder accepted and listed seven (7) subcontractors in required bid documents. Only one of those seven subcontractors is certified, a firm owned by a White Woman.

Information presented above related to the Subcontractor Outreach Program is too limited, due to

the number of projects, to predict the level of success of the program. EOCP will continue to monitor subcontractor information and will provide a report on data collected through the new program in six months.

Respectfully submitted,

Stacey Stevenson
Deputy Director
Contract Services Division

Frank Belock, Jr.,
Deputy City Manager

Belock/SS

ATTACHMENTS:

- 1.Prime Contractors, All Bids
- 2.Prime Contractors, Contracts Awarded
- 3.Subcontractors
- 4.Selected Subcontractors
- 5.Friars Rd/Mission Center Road Corridor Improvements
- 6.Catalina Trunk Sewer
- 7.Opinion Number 96-2
- 8.Opinion Number 97-2

Note: Attachments 7 and 8 are not available in electronic format. Copies of the attachments are available for review in the Office of the City Clerk.

FISCAL YEARS 1998 - 2000

Attachment 1

PRIME CONTRACTORS

	Number of Bidders	Percentage of Total	Individual Contractors
Total DBE	282	14.07%	47
African American	10	0.50%	4
Asian	3	0.15%	2
Latino	171	8.53%	27
White Women	98	4.89%	14
Disabled Vets (DVBE)	20	1.00%	9
Non DBE	1,702	84.93%	535
Totals	2,004	100%	591

FISCAL YEARS 1998 - 2000
Attachment 2

PRIME CONTRACTORS

	Number of Bidders	Percentage of Total	Individual Contractors
--	-------------------	---------------------	------------------------

Total DBE	47	13.08%	20
African American	3	0.82%	2
Asian	1	0.27%	1
Latino	34	9.26%	12
White Women	9	2.45%	5
Disabled Vets (DVBE)	1	0.27%	1
Non DBE	319	86.92%	172
Totals	367	100%	193

.....**FISCAL YEARS 1998 - 2000**

Attachment 3

SUBCONTRACTORS

	# of Listed Subs	Percentage of Total	Individual Subs
Total DBE	935	16.81%	254
African American	35	0.63%	21
American Indian	19	0.34%	9
Asian	44	0.79%	21
Filipino	1	0.02%	1
Latino	488	8.77%	106
White Women	346	6.22%	95
Disadvantaged Other	2	0.04%	1
Disabled Vets (DVBE)	49	0.88%	12
Non DBE	4,583	82.32%	1,891
Totals	5,567	100%	2,157

FISCAL YEARS 1998 - 2000

Attachment 4

SUBCONTRACTORS

.....

	Number of Subs	Percentage of Total	Individual Subs
Total DBE	162	18.04%	101
African American	6	0.67%	6
American Indian	2	0.22%	2
Asian	7	0.78%	6
Filipino	0	0.00%	0
Latino	80	8.91%	50
White Women	67	7.46%	37
Disadvantaged Other	0	0.00%	0
Disabled Vets (DVBE)	13	1.45%	6
Non DBE	723	80.51%	476
Totals	898	100%	583

.....

Attachment 5

FRIARS ROAD/MISSION CENTER ROAD CORRIDOR IMPROVEMENTS

LOW BIDDER

	All Subs	Successful Subs	Percentage of Total Bid
Total DBE	2	1	1.17%
Latino	1	0	0.00%
White Women	1	1	1.17%
Non DBE	2	0	0.00%
Total	4	1	1.17%

THIRD LOW BIDDER

	All Subs	Successful Subs	Percentage of Total Bid
Total DBE	1	0	0.00%
Latino	1	0	0.00%
Non DBE	8	4	17.59%
Total	9	4	17.59%

.....

Attachment 6

CATALINA TRUNK SEWER

LOW BIDDER

	All Subs	Successful Subs	Percentage of Total Bid
Total DBE	1	1	0.62%
White Women	1	1	0.62%
Non DBE	14	6	30.68%
Total	15	7	31.30%

THIRD LOW BIDDER.....

	All Subs	Successful Subs	Percentage of Total Bid
Total DBE	4	2	14.99%
Latino	1	1	13.24%
White Women	3	1	1.75%
Non DBE	17	3	18.66%
Total	21	5	33.66%