

DATE ISSUED: October 31, 2001

REPORT NO. 01-238

ATTENTION: Public Safety and Neighborhood Services Committee
Agenda of November 7, 2001

SUBJECT: City Manager's Equal Opportunity Contracting (EOC) Status Report

SUMMARY

Issues - 1) Should the City Council accept the City Manager's Equal Opportunity Contracting biannual status report for the Second Half of FY 2001, 2) Should the City Council adopt the Minor Construction, Contractor Assistance and Apprenticeship Programs, 3) Should the City Council authorize the issuance of a Request for Proposals for the selection of an outreach consultant?

Manager's Recommendation - Accept the report.

Other Recommendations - Adopt the Minor Construction, Contractor Assistance and Apprenticeship Programs. Authorize the issuance of a Request for Proposals for the selection of an outreach consultant.

Fiscal Impact - None to the issuing department.

Reference - City Manager's Report 01-118

BACKGROUND

As prescribed by Council Policy 300-10, the City Manager is required to report to the City Council on the status of Equal Opportunity Contracting (EOC). The mission of EOC is to ensure all who do business with the City of San Diego are fair in payment practices; do not discriminate; and provide opportunities for all citizens through hiring, subcontracting and apprenticeship policies. The specific functions performed include labor compliance, equal employment

opportunity and subcontractor outreach. This report covers contracting activity monitored by EOC for the second half of Fiscal Year 2001 (January 1, 2001 through June 30, 2001).

DISCUSSION

Contract Activity - Construction

For the period January 1, 2001 through June 30, 2001, the City of San Diego issued 91 construction contracts. City - funded construction contracts were issued under the Subcontractor Outreach Program (SCOPE) which includes mandatory subcontracting and outreach components. SCOPE will be discussed in greater detail later in the report. Federal and federally assisted construction projects include mandatory goals ranging from 8% to 30% for the participation of Minority Owned Business Enterprises, Women Owned Business Enterprises, and/or Disadvantaged Owned Business Enterprises (M/W/DBE).

During the period under review, construction contract awards totaled \$171,419,257. While the City of San Diego awards contracts to prime (or general) contractors, most of these contracts, given the size, duration, and/or complexity of the project, require the prime contractor to issue subcontracts to other firms. The 42 firms that received the 91 prime contracts awarded during this period issued 187 subcontracts at a total subcontractor dollar amount of \$26,657,149, or 15.55% of the total award dollars.

In keeping with past practices, and in an effort to monitor and analyze trends in contracting activity, Equal Opportunity Contracting evaluated the distribution of dollars among certified and non-certified prime and subcontractors. Certified firms are defined as those businesses formally designated as M/W/DBEs and/or Disabled Veteran Business Enterprises (DVBE). Of the prime contractor awards, \$4,197,162 (2.9%) was awarded to certified prime contractors. Further, of the subcontractor awards, \$5,766,669 (21.63%) was awarded to certified firms. For a breakdown of the ethnic distribution of the contractors receiving both the prime and subcontractor awards, refer to Attachments 1 through 4.

The above statistics reveal that the City of San Diego's most critical area of concern in construction contracting is the significant disparity between certified and non-certified prime contractors. EOC staff is actively outreaching to the contracting community in an effort to eliminate the disparity. Outreach efforts include advertisements and articles in local publications, regularly scheduled contractor workshops and the issuance of long range project forecasts. Other significant efforts to address this issue can be found in the program update section of this report.

Contract Activity - Construction Subcontractor Outreach Program

As previously stated, construction contractors bidding City of San Diego funded projects during this period were required to adhere to SCOPE. SCOPE applies on all City-funded construction projects valued over \$100,000. This program requires mandatory use of subcontractors at a percentage level determined by a City engineer on a project-by-project basis; mandatory broad-based outreach in solicitation of sub-bids by the prime; and mandatory submission of outreach documentation.

For purposes of this program, broad-based outreach is defined as the achievement of a minimum of 80 out of 100 possible outreach points. To maximize the discretion of the contractor in making business related decisions, the 100 points have been divided into nine (9) scored indicators. In a “cafeteria style” approach, contractors have the discretion of selecting those outreach methods, among the nine (9) that are most appropriate for their company, on a given project. Thus, the two basic requirements for fulfilling broad-based outreach are: 1) for each indicator chosen, the contractor must fulfill the specified components; and 2) enough indicators have to be completed successfully to achieve a minimum of 80 points (refer to attachment 14 for a complete description of each indicator).

SCOPE was unanimously adopted by the full City Council in March, 2000. After adoption, EOC staff spent approximately four months preparing and educating City staff and the contracting community. The first SCOPE projects were advertised in September, 2000. Between September 1, 2000, and August 31, 2001, 27 projects were advertised with SCOPE requirements. Of those 27 projects, five (5) failed to be awarded due to bidders’ failures to comply with the mandated requirements of the program. This is a failure rate of 18%. That is, for 18% of the projects, either all bidders were rejected outright for non-compliance or, while one or more higher bidders may have met the requirements of the program, their bids exceeded funds available for the project. Such a rate of failure is consistent with what is to be expected with the implementation of a new program. SCOPE is modeled after a program that has been used by the City of Los Angeles for approximately five (5) years. Los Angeles experienced a similar phenomenon at the outset of its program, with the rate of rejections verses successful awards normalizing after approximately one year.

For another five (5) of the 27 projects, awards were made to the second low bidder when the first low bidder failed to meet program requirements. The cost of awarding to the second low bidder for these five (5) projects was \$1.3 million, the difference between the bids submitted by the lowest bidder and the second lowest bidder (see Attachment 12). Again, this phenomenon was anticipated and is consistent with what the City of Los Angeles experienced in the first year of their program.

An analysis of the outreach and subcontractor participation data submitted by the prime contractors for these 27 projects revealed the following:

Prime contractors consistently select subcontractors with the lowest bid irregardless of race and gender;

Certified sub-bidders have a higher success rate than non-certified sub-bidders:

- For the 22 successfully awarded contracts, while 5.76% of all subcontractors submitting sub-bids were certified, they received 19.16% of all sub-awards. That is to say, 19.16% of all certified subcontractors who bid with prime contractors were listed as part of the contracting team.
- Of the 29 SCOPE projects advertised, certified subcontractors comprised 14% of all bidders.

There is no correlation between team composition (certified verses non-certified) and the success rate of the prime contractor in achieving the lowest bid.

Refer to attachments 9, 10 and 12 for illustrations.

SCOPE has resulted in positive efforts by firms bidding as prime contractors to solicit a broader base of subcontractors. This outreach continues to make more contracting opportunities with the City available to a greater number of businesses within our community. Subsequently, there has been an increase in the overall number and diversity of subcontractors solicited during bids, and in virtually every contract, firms bidding as prime contractors have been able to not only meet, but exceed the mandated subcontractor participation levels.

The most significant concern raised by prime contractors to date has been the issue of cost. Specifically, the cost of running project specific ads in local publications in order to fulfill indicator number four: Broad Based Advertisement. As previously stated, SCOPE utilizes a “cafeteria” approach. As such, contractors are not required to complete all nine (9) scored outreach steps, as long as they successfully complete enough to achieve 80 out of 100 points. Therefore, as Indicator Number Four is worth ten (10) points, contractors can waive this indicator and yet successfully complete the overall program requirements. However, in recognition of the contractors’ efforts to fully comply with the spirit of the program and, in an effort to meet the needs of the broader contracting community, EOC has partnered with the Association of General Contractors (AGC) and the Engineering & General Contractors Association (EGCA) to identify methods of streamlining and reducing the cost of this indicator while protecting the integrity of the program.

In response, the AGC has agreed to list all SCOPE projects, the plan holders, and all other required information necessary under Indicator Number Four in the Southern California Builders’ Exchange, a weekly contracting publication circulated in San Diego, Orange, Riverside and Imperial Counties. Free copies of the publication are issued weekly to EOC, the Black Contractors Association and Latino Builders as well as other community based organizations.

For their part, the EGCA has negotiated an agreement with the *San Diego Daily Transcript* on behalf of the contracting community. As the *San Diego Daily Transcript* is the City of San Diego’s official publication for noticing, and is widely read by bidders and sub-bidders seeking contracting opportunities, management of the publication has agreed to provide advertising space

to contractors bidding SCOPE projects at a 50% discount. All such ads will run once a week on a page dedicated to SCOPE projects.

Thus, given that contractors, by and large have now learned to successfully complete SCOPE requirements, and given that the AGC and EGCA's streamlining efforts have only recently gone into effect, it would be prudent to continue the program for another year, with updates provided to the Mayor and City Council through the biannual reports.

Contract Activity - Consultant

During this review period, \$67,302,163 were awarded through consultant agreements. Consistent with the practices of construction contractors, consultant firms routinely employ sub consultants to assist in the accurate and timely completion of projects. Awards to sub consultants equaled \$11,068,873 or 16.45% of the total consultant allocation.

Of the prime consultant awards, \$4,447,160 (7.91%) were awarded to certified prime contractors. Further, of the sub consultant awards, \$3,037,471 (27.44%) were awarded to certified firms.

The complete ethnic breakdown of prime and sub consultant awards is provided in Attachments 5 through 8.

Within the consultant contracting community, the most significant area of concern continues to be the ability to attract and retain a diverse workforce. EOC continues to facilitate the public/private recruitment team developed between City departments and private architectural and engineering firms. The City departments actively involved in this effort are Engineering and Capital Projects, the Metropolitan Wastewater Department and the Water Department.

Meeting on a regular basis, the coalition is actively developing both long and short term solutions. Creative solutions posed include multiple firms sharing the cost and use of college interns, developing a pool of qualified applicants from which all participating agencies can draw, working with middle and high school children to foster interest in the field as they prepare for college and, recruiting trips to colleges and universities in such states as Illinois, Texas and Florida to name a few.

The second biannual architectural and engineering consultant summit will be held in January, 2002.

Contract Activity - Purchasing Contracts

Under the current organizational structure, the Purchasing Division of the General Services Department is responsible for issuing contracts for commodities, minor construction and services. During the second half of Fiscal Year 2001, the Purchasing Division achieved the following distribution of contract dollars:

	COMMODITY	MINOR	SERVICES	TOTAL
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		CONSTRUCTIO N		
MBE	\$1,349,938 (3.6%)	53,744 (4.0%)	1,645,079 (7.5%)	3,048,761 (5.1%)
WBE	1,700,304 (4.6%)	7,990 (0.6%)	2,415,782 (11.0%)	4,124,076 (6.8%)
OBE	33,952,689 (91.8%)	1,226,234(95.4%)	17,934,348 (81.5%)	53,113,271 (88.1%)
TOTAL	\$37,002,931	\$1,331,079	\$22,020,795	\$60,354,805

Equal Employment Opportunity (EEO) Outreach Program:

During fiscal year 2001, a total of 15 Equal Employment Opportunity compliance field reviews were initiated by City staff with completed during this period. Field reviews are conducted to: verify reported work hours; ensure contractors are actively administering nondiscrimination programs on City projects; determine the degree of uniformity of employment of people of color and women on federal/federally assisted projects throughout the length of the project; evaluate the contractor's affirmative action efforts on federal/federally assisted projects in compliance with Executive Order 11246; and investigate any indications of discrimination.

Contract compliance reviews generally require two to three months for completion and conclude with one of three possible outcomes: 1) contractor is found **In Compliance** with no violations, 2) minor violations are identified and contractor signs a **Letter of Commitment** to resolve these issues, or 3) major violations are identified and contractor signs a **Conciliation Agreement** to resolve these issues. Conciliation agreements require contractors to sign a "contract" with the City and/or Office of Federal Contract Compliance outlining specific actions to be taken to correct the violations cited. Compliance review findings are valid for a period of two years. The following contractors were reviewed in fiscal year 2001 with results as indicated:

Contractor	Results
Archer Western	Letter of Commitment
Brown & Caldwell	Letter of Commitment
Clauss Construction	Letter of Commitment
DJF, Inc.	Letter of Commitment
E.L. Yeager	In progress
Falcon General	Letter of Commitment
Kone, Inc.	In progress
Kvass	In progress
Nielsen Dillingham w/OFCCP	Notice of Violation *
Nielsen Dillingham (Subcontracting Audit)	In progress
Pacific southwest	Letter of Commitment
Perry Electric	Letter of Commitment
Riha Construction	Letter of commitment
Shiva Construction	Debarred
TC Construction	Letter of Commitment

*Nielsen Dillingham was reviewed by the Office of Federal Contract Compliance Program (OFCCP). Finding a minor deficiency in Nielsen Dillingham's recruitment strategies, OFCCP issued a Notice of Violation. The issuance of a Notice of Violation is unique to OFCCP and is used for relatively minor infractions.

Investigative Unit

In 1998, EOC formed an investigative unit to handle allegations of contractor improprieties. The unit investigates allegations of discrimination, slow payment and non-payment of both subcontractors and labor force, and illegal substitutions. The unit works closely with City staff and the contracting community to identify and resolve such issues in a fair and equitable manner.

During the second half of Fiscal Year 2001, the unit opened one (1) new case and closed two (2) cases. Cases closed resulted in the recovery of \$5,329.60 for subcontractors and employees of prime contractors. In total, \$2,109,708.84 was recovered for all of Fiscal Year 2001.

Program Update

In response to discussions at the PS & NS meeting of June 6, 2001, and subsequent budget hearings, Equal Opportunity Contracting staff has been actively preparing for implementation of new directives. Input into the programs and the course of implementation was sought from several sources including the Citizen's Equal Opportunity Commission, The Mayor's Latino Advisory Board, the Public Works Advisory Board and the Small Business Advisory Board.

Minor Construction

Expansion of the existing Minor Construction Program will be structured to assist small and disadvantaged contractors in gaining expertise and growing their capacity in a controlled environment. Specific benefits to these businesses will be 1) a leveled playing field; 2) lower

contract amounts to allow development of bond and credit levels; and 3) accumulation of business and technical experiences.

The program, which will apply to construction projects valued under \$100,000, will include three (3) key components: a Minor Construction Availability List will be created for construction projects under \$25,000. On a rotational basis, bids will be solicited from five (5) eligible contractors for each project within this range with the award given to the lowest, responsible bidder. Any business receiving, within a fiscal year, more than \$1,000,000 in City contracts will be removed from the Availability List with reinstatement the following year. Plans and specifications for projects under \$25,000 are provided to small and emerging businesses at no cost.

A city-wide General Requirements Contract (GRC) will be developed for construction projects between \$25,000 and \$50,000; and for projects in the \$50,000 to \$99,999 range, bids will be sought through an open, competitive bid process. With all three (3) components, eligible bidders will be limited to those firms certified as economically small in an effort to create a level playing field and provide enhanced opportunities for small firms to thrive.

A streamlined certification process, separate from the DBE certification issued by CalTrans, has been developed. Contractors will be required to complete an intake form of basic summary information about their business, license and certification status. The form will be submitted with copies of their contractor license and Small Business/Disabled Veteran Business Enterprise Certification and a signed, notarized statement showing that annual receipts from the preceding three years do not exceed industry specific maximum receipts standards (attachment 15). Small and Emerging Businesses must then renew their City of San Diego certification simultaneously with their Department of General Services certification.

Contractors certified by the City of San Diego as economically small will be randomly audited in an effort to ensure the integrity of the program. Contractors found to have willfully misrepresented their eligibility shall be removed from the list. Staff may also seek other punitive action up to and including debarment.

The minor construction program will be jointly administered by EOC and the Engineering & Capital Projects Department (E&CP). During fiscal year 2002 budget deliberations, EOC staff received funding for six additional positions to staff all of the new programs (including those below). The new positions were budgeted as 1.0 Senior Management Analyst; 1.0 Associate Management Analyst; and 4.0 Clerical Assistants II. In contrast, given the limited detail in the program model at the time of budget deliberations, E&CP was not able to anticipate and prepare for the significant impact in workload that will occur. It is anticipated that the Administrative Division of E&CP will require the addition of 1.0 Associate Management Analyst positions in order to meet the demands of the Minor Construction Program and the anticipated Pre-Qualification Program currently moving from Land Use & Housing to full Council for final adoption. E&CP staffing levels will likely be addressed as a mid-year budget adjustment.

Contractors Assistance Program

The Contractor's Assistance Program (CAP) is similar but not identical to the existing Mentor-

Protege Program operated by the Community Services Department. Its intent is to increase overall participation of emerging businesses and foster long-term business relationships between prime and subcontractors. Technical and business management needs of emerging businesses will be identified and training will be provided; networking will be promoted between emerging businesses and prime contractors.

Equal Opportunity Contracting staff will administer CAP with input from an Advisory Committee comprised of no fewer than seven (7) members, including the EOC Deputy Director; two (2) additional City staff members; and four (4) community representatives. City staff will be sought from such key departments such as Community and Economic Development, E&CP, Metropolitan Wastewater, Purchasing and Water. Community members shall include representatives of such organizations as the Black Contractors Association, the Contracting Opportunity Center (COC), Disabled Veterans, Latino Builders, and the Surety Association, as well as construction contractors, consultants, and the banking and education communities. EOC staff and the Advisory Committee will develop performance measures to identify critical areas of success for participants. All appointments shall be made by the City Manager or his designee.

Outreach

A Request For Proposals for Professional Services for a Contract Outreach Liaison has been prepared and is ready for advertisement. The intent is to augment existing outreach efforts of Equal Opportunity Contracting (see attachment 13).

A key requirement in the scope of services is the development of a database of construction firms who are ready, willing and able to perform on City public works projects. This database will include all available businesses in the Counties of San Diego, Riverside, Orange, Imperial, Los Angeles and San Bernardino and will include all historically under represented groups.

The Outreach Consultant Liaison will also develop an advertising campaign, create networking opportunities for prime and subcontractors, and facilitate workshops for contractors describing in detail how to successfully meet City requirements.

Apprenticeship Monitoring

EOC staff has developed procedures to monitor and enforce requirements for mandatory usage of apprentices on City public works projects. In the short term, the ethnic and gender diversity found at the apprentice level will result in a more inclusive construction workforce for City of San Diego construction projects. In the long term, enforcement of apprentice utilization requirements could result in increased diversity among business owners. Usage of apprentices

would result in a better trained work force, higher product quality for City public works projects, a larger pool of skilled employees and increased job opportunities.

The Resource and Apprenticeship (R&A) Subcommittee of the Public Works Advisory Committee provided valuable input in this discussion and at its meeting on August 9, 2001, agreed to serve as an advisory council. Members of the R&A Subcommittee include representatives from the American Indian Apprenticeship Initiative, the Associated Builders and Contractors, the Association of General Contractors, the Contracting Opportunities Center, the San Diego Community College District, the San Diego Electrical Training Trust, the San Diego Housing Commission, the San Diego Workforce Partnership, the W.O.R.C. Foundation, and other professionals.

The R&A Subcommittee encouraged the City to include language in City contracts requiring usage of apprentices at a ratio determined by the bargaining agreement for each trade. The Subcommittee recommended implementation of this requirement on projects valued over \$1,000,000 during this initial period. Staff concurs with these recommendations.

Partnerships

EOC has begun an effort to facilitate and foster partnerships with external agencies as well as private industry. To date, EOC is working in partnership with CCDC in conducting contractor forums to solicit new bidders, and in reviewing contract language, processes and procedures in an effort to both streamline processes and maximize our ability to encourage diversity among contracting and subcontracting firms and their respective workforce.

EOC has also taken steps to outreach to the San Diego Unified School District. All such efforts are in the infancy stage. It is anticipated that more solidified partnerships will be announced in the next program update.

Next Steps

In addition to the above initiatives, EOC is currently working with the Organizational Effectiveness Program on the creation of a comprehensive strategic plan. To date, a new, more focused mission statement has been crafted. A series of working meetings with current and former staff as well as key stakeholders will be scheduled as part of the strategic plan development.

Further, staff will continue to work with the various groups listed throughout this report in an effort to continually build upon these early program changes.

ALTERNATIVE

Do not accept the report.

Do not adopt the adopt the Minor Construction, Contractor Assistance and Apprenticeship Programs.

Do not authorize the issuance of a Request for Proposals for the selection of an outreach consultant.

Respectfully submitted,

Stacey Stevenson
Deputy Director, Equal Opportunity Contracting
Office of City Manager

Approved: P. Lamont Ewell
Assistant City Manager

Ewell/SS

Note: The attachments are not available in electronic format. A copy of the attachments is available for review in the Office of the City Clerk.

- Attachments: 1. Second Half FY 2001 All Construction Projects Ethnic Distribution
2. Second Half FY 2001 All Construction Projects Participation Levels
 3. Second Half FY 2001 Prime Construction Participation Levels
 4. Second Half FY 2001 Subcontractor Construction Participation Levels
 5. Second Half FY 2001 All Consultant Projects Ethnic Distribution
 6. Second Half FY 2001 All Consultant Projects Participation Levels
 7. Second Half FY 2001 Prime Consultant Participation Levels
 8. Second Half FY 2001 Subcontractor Consultant Participation Levels
 9. SCOPE Projects Analysis: Successfully Awarded Projects
 10. SCOPE Projects Analysis: Failed Projects
 11. Semi Annual Report FY2001 SCOPE Projects
 12. SCOPE Projects Analysis: Second Low Awards
 13. Request for Proposals for Outreach Consultant
 14. SCOPE Outreach Criteria
 15. Small and Emerging Business Size Standards