

DATE ISSUED: March 14, 2002 REPORT NO. 02-046

ATTENTION: Honorable Mayor and City Council  
Agenda of March 18, 2002

SUBJECT: City Manager=s Equal Opportunity Contracting (EOC) Status Report for  
the Second Half of Fiscal Year 2001.

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 (CMR 01-238); 2) Should the City Council adopt the Contractors Assistance Program and the Minor Construction Program Report with changes in program description as defined in this report; 3) Should the City Council direct the necessary changes in Municipal Code to establish a Minor Construction Availability List for solicitation of bids for construction projects under \$100,000; and 4) Should the City Council adopt an Apprenticeship Program for City funded construction projects?

Manager=s Recommendation - Accept the report.

Other Recommendations - Adopt the Minor Construction, Contractor Assistance and Apprenticeship Programs. Direct the necessary changes to the Municipal Code to establish a Minor Construction Availability List for solicitation of bids for construction projects under \$100,000.

Fiscal Impact - None to the issuing department.

Reference - City Manager=s Report 01-238  
City Manager=s Report 01- 118

## BACKGROUND

On November 7, 2001, Public Safety & Neighborhood Services Committee (PS&NS) received the Equal Opportunity Contracting Biannual Report for the period January 1, 2001 through June 30, 2001 (CMR 01-238, attached). Included in said report were four (4) program recommendations intended to increase outreach to and utilization of historically underutilized construction contractors. The program recommendations - creation of a minor construction and contractor assistance program, the mandated usage of apprentices on City funded projects, and the utilization of an outreach consultant - were brought forwarded by staff after extensive feedback was gathered from the contracting community.

While under discussion at PS&NS, the report received considerable comment from the public. In addition to concern over the general state of the City's participation levels in contracting, some speakers called for another look at the four (4) recommendations. As a result, while unanimously accepting the report, Council Committee members directed staff to work again with an industry taskforce in reviewing the recommendations before forwarding the Manager's Report and its contents to full Council.

## DISCUSSION

As delineated in CMR 01-238, the four (4) recommendations brought by staff were the creation of contractor assistance and minor construction programs, the mandated usage of apprentices on City of San Diego funded construction projects, and the utilization of a consultant to assist staff with broad-based outreach to the contracting community.

Following Committee direction, staff met with a cross segment of the contracting community to review the four (4) recommendations listed above. After reviewing and discussing each proposal, the taskforce voted to move forward with three (3) of the four (4) original recommendations, with the outreach consultant as the exception. Sufficient concern over the retention of a consultant to assist staff with conducting broad-based outreach was raised to warrant tabling that recommendation for further consideration. In an effort to maintain momentum, the taskforce voted to bring the other three (3) recommendations to full Council while the fourth is under reconsideration.

Concurrent to the work with the taskforce directed by PS&NS, EOC staff continued to develop the program models, by researching available studies, reviewing programs in place in other agencies, and meeting with small contractors and representatives of contracting associations. Based on data collected from all of the above, staff has further defined the need for some of the program components. Refinements have also been made in response to the needs of the industry.

Minor Construction and Contractors Assistance Programs

The Minor Construction (MCP) and Contractors Assistance (CAP) Programs were developed in response to perceived inequities in the allocation of contracting dollars. In addition to addressing perceived inequities, MCP and CAP also derive impetus from an economic perspective.

The economic impetus behind removing barriers and promoting small business growth is nationally recognized and documented in the President's Report on THE STATE OF SMALL BUSINESS<sup>1</sup>. The report recognizes (3) three areas in which small business significantly impacts America's economy. 1) New Jobs: **two-thirds** of the total new jobs in the United States in 1997, were created by small business dominated industries. 2) Innovation: small business is credited with renewing America's economy by its experimentation and innovation leading to technological change and economic growth. 3) Access: small firms represent opportunity for those with limited access to economic power:

- 1) small minority-owned businesses increased more than 168% and women-owned businesses 89% from 1987B1997;
- 2) 45.6% of total small business ownership is held by minorities and women;
- 3) minorities now comprise 27.3% and women 45% of the small business workforce.

Why such rapid growth? The report attributes it to, ARegulatory events, notably the passage of the Civil Rights Act in 1964, the Equal Credit Opportunity Act in 1975, and the Affirmative Action Act in 1978, helped to remove structural barriers...@. As example, the report cites that fifty years ago, only 26% of the U.S. workforce were women, predominately employed as secretaries, nurses, and teachers; minorities had yet to experience their phenomenal small business ownership. The report ends with stating that; A...the crucial barometer for economic and social well-being is the continued high level of creation of new and small firms in all sectors of the economy by all segments of society. Government policy facilitates that process when it eliminates barriers to entryY@.

In California, small business **is** business. Small business accounts for 53.4% of the states total employment. Of all employer businesses in California, 99.2% are small businesses (less than 500 employees). Of particular interest to EOC is the fact that 57.3% are minority and women-owned businesses.

The two new small business programs initiated by the City of San Diego, the Minor Construction and Contractors Assistance Programs, have a firm social and economic rationale.

### Program Description

MCP 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. MCP applies to construction

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<sup>1</sup>*The State of Small Business, A Report of the President, 1998* (Washington: United States Government Printing Office, 1999)

contracts under \$100,000, and includes two components: a Minor Construction Availability list created for construction contracts under \$100,000. For contracts under \$50,000, on a rotational basis, bids will be solicited from five (5) eligible contractors for each project with the award given to the lowest, responsible bidder. Contracts in the \$50,000 - \$99,999 range will seek bids from the whole list through an open competitive bid process. 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. With both 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 consisting of basic summary information about the business, license and certification status (Small Business/Disabled Veteran Business Enterprise certification) will be required. An aggregate three-year income cap (based on an emerging business program developed by the City of Sacramento) is a further criterion to qualify for MCP. (Income Caps: Attachment 1, Draft Administrative Regulation Attachment 2).

CAP is similar but not identical to the existing Mentor-Protégé Program operated by the Community and Economic Development 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 in a manner prescribed by CMR 01-238.

Funding for three new positions was added to EOCP=s budget to address the anticipated increase in workload: 1.0 Senior Management Analyst, 1.0 Associate Management Analyst and 1.0 Clerical Assistant II. These positions will be responsible for maintaining the MCP available lists, liaising with participating departments on contracts under \$100,000, setting program goals and directing CAP training, mentoring, networking, and financial and administrative resource components. The positions are funded from the General Fund.

### Program Changes

The program presented to the PS&NS Committee originally contained three (3), dollar level components.

- 1) For projects under \$25,000, five bids would be sought from the list of certified small and emerging firms. (This component does not change);
- 2) For projects between \$25,000 and \$50,000 a city-wide General Requirements Contract (GRC) would have been developed with bids sought through an open, competitive process from the eligible list. GRC=s are multi-project contracts operating with one prime contractor subcontracting each project. Small and Emerging Businesses would be unable to establish bonding and insurance levels needed to operate as the prime contractor and participation would be limited to performing as subcontractors. Discussion with small and emerging contractors and affiliated associations revealed that

this type of contract for the \$25,000 through \$50,000 levels would not enable them to develop the technical and financial expertise needed to develop into prime contractors. Approval from Council is requested to change the \$25,000-\$50,000 contract levels from a GRC multi-project contract to individual contracts with bids sought, on a random basis, from five (5) registered small and emerging businesses on the available list;

- 3) For projects in the \$50,000 to \$99,999 range, bids will be sought through an open, competitive bid process from the available list. (This component does not change).

Approval from Council is needed to change the Municipal Code to accommodate soliciting bids from a Minor Construction Availability List for construction projects under \$100,000.

## PROGRAM IMPLEMENTATION

Pending approval from the City Council, the MCP and CAP will begin at the end of March, 2002, with a series of five (5) workshops held in the City of San Diego. These workshops will kick-off the program with presentations from Council representatives, Equal Opportunity Minor Construction and Consulting teams, and a Purchasing representative. Presentations on business opportunities with the City will be a primary focus and will include registering for the Minor Construction Program. The first contracts under MCP will begin May 2002, with certification of participating firms for MCP taking place from mid-March to April. CAP will begin holding advisory meetings in May 2002 to begin identifying performance measures and additional program content.

### Future Program Tasks

The Equal Opportunity Contracting Executive Team will continue to build upon the program=s progress. At present, four (4) tasks have been identified which will aid the MCP and CAP:

- 1)The goal of MCP is to increase opportunities for small, emerging businesses by creating an available list for contracts under \$100,000. However, the income cap criteria for emerging businesses was based on a program used by the City of Sacramento in 1998 and may be prohibitive for the San Diego area at this time. The Small Business Advisory Board will aid the City in determining if the income caps need to be adjusted within the next six months.
- 2)Define a process for identification of projects ideal for Aunbundling@ (the division of contracts into one or more contract packages).
- 3) Develop a Auser friendly@ contract boilerplate.
- 4) Explore the City=s Risk Policy regarding small contracts. At present two levels of bonds exist for projects under \$100,000 and may be prohibitive for small and emerging contractors:

- a) A guarantee of Good Faith, for an amount not less than 10% of the aggregate sum of the bid, is required from each bidder for bids \$25,000 and greater. The bidder agrees, among other provisions, that in case of bidder=s refusal or failure to execute said contract and give said final bonds, the money shall remain the property of the City.
- b) A Payment Bond (Materials & Labor Bond) for not less than fifty percent (50%) of the contract price, to satisfy claims of material suppliers and of mechanics and laborers employed on the work.

Apprenticeship Utilization

Staff proposes no further changes to the proposed apprenticeship utilization model, as described in CMR 01-238 and CMR 01-118.

ALTERNATIVE

Do not accept the report.

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

Do not direct changes to the Municipal Code to increase the dollar threshold for Minor Construction Contracts.

Respectfully submitted,

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

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Approved: P. Lamont Ewell  
Assistant City Manager

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

- Attachments:
- 1. Minor Construction Program, Income Caps
  - 2. Minor Construction Program, Draft Administrative Regulation
  - 3. City Manager Report 01-238, City Manager=s Equal Opportunity Contracting (EOC) Status Report