

DATE ISSUED: May 3, 2002

REPORT NO. 02-106

ATTENTION: Public Safety and Neighborhood Services Committee
Agenda of May 8, 2002

SUBJECT: City Manager=s Equal Opportunity Contracting Program (EOCP) Status
Report

SUMMARY

Issue - 1) Should the City Council accept the City Manager=s Equal Opportunity Contracting biannual status report for the First Half of FY 2002; 2) Should the City Council approve the recommended revision to the Subcontractor Outreach Program?

Manager=s Recommendation - Accept the report.

Adopt the Subcontractor Outreach Program revision.

Fiscal Impact - None to the issuing department.

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 first half of Fiscal Year 2002.

DISCUSSION

Contract Activity - Construction

For the period July 1, 2001 through December 31, 2001, the City of San Diego issued 58 construction contracts. State, Federal and federally assisted construction projects include mandatory goals ranging from 8% to 30% for the participation of certified firms with certified firms being those formally designated by the State and/or the City as Minority Owned Business Enterprises, Women Owned Business Enterprises, Disadvantaged Business Enterprises and/or Disabled Veteran Owned Business Enterprises (M/W/D/DVBE). City - funded construction contracts issued under the Subcontractor Outreach Program (SCOPE), include mandatory, project specific subcontracting goals.

The Equal Opportunity Contracting Program monitors and tracks the award of contracts. As a part of monitoring and enforcing State of California Public Contract Code and City of San Diego Municipal Code provisions, EOC tracks the dollars awarded to prime contractors by the City and commitments made by prime contractors to subcontractors. Awards during the period under review are summarized as follows:

Table 1
Prime Contractor and Subcontractor Awards

	Award Amount	Percentage of Total Awards
Prime Contractors (39)	\$88,853,837.22	74.45%
Subcontractors (77)	\$30,486,603.38	25.55%
Total	\$119,340,440.60	100%

In keeping with the City's efforts to guard against discrimination in contracting, EOC further evaluates the distribution of contracting dollars between certified and non-certified firms. Overall, certified firms received 4.81% of contracting dollars for this review period.

Table 2
Certified and Non-Certified Participation

	Award Amount	Percentage of Total Awards
Certified Firms*	\$5,768,720.73	4.81%
Non-Certified Firms	\$114,117,816.87	95.19%

As seen in Table 1 above, at 74.45%, the majority of contracting dollars stayed with the prime contractors. While 66.3% of the contractors used were subcontractors, said subcontractors received only 25.55% of the total dollars. Noting this, staff has taken a more refined look at the distribution of contracting dollars related to the use of certified firms in order to determine the frequency at which certified firms receive prime contract awards verses subcontract awards. The results are illustrated in Table 3 below.

Table 3
 Certified Prime Contractors verses Subcontracts

	Award Amount	Percentage of Total Awards
Certified Prime Contractors* (5)	\$3,715,217.73	4.16%
Certified Subcontractors* (22)	\$2,053,503.00	6.72%

*A further ethnic breakdown of certified firms can be found in Attachments 1 through 4.

Historically, EOC has based its bi-annual report on commitments made at the start of the projects. That is, the dollar amounts represented in the above charts and accompanying attachments represent commitments at the time of award. As such, the dollars listed represent the dollar amounts that the City has agreed to pay the prime contractor and the amount the prime contractor has agreed to pay its subcontractors as of the end of the reporting period. At the direction of the Public Safety and Neighborhood Services Committee (PS&NS), staff has endeavored to take the added step of reporting both the commitments made and the actual dollars that were paid at project close out. Said information can be found in Attachments 5 and 6. The projects that are represented through this data do not necessarily coincide with the projects represented by the data previously discussed in this report in Tables 1 through 3 nor the associated attachments.

Contract Activity – SCOPE (Participation Levels)

SCOPE applies to 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 the solicitation of sub-bids by the prime contractors; and mandatory submission of outreach documentation.

As previously stated, the data represented in the Contract Activity – Construction section of this report is tied to projects that were actually awarded during this six (6) month review period. The SCOPE data contained herein represents information collected based on the bid opening date. Due to the lag time created by contractor document submittal requirements, staff processing time, signature cycle for contract documents, etc., there may be a significant delta between the bid opening date and the project award date. Further, SCOPE Projects represent a subset of construction contracting. City funded projects of \$100,000 or less, State, Federal and Federally assisted projects do not include SCOPE requirements. As such, the figures shown for SCOPE may not correlate with the previous section of this report. Bid opening data collected for this period is represented in Attachments 7 through 12 of this report.

As prescribed in this Council mandated program, the three (3) low bidders on each project must submit documentation demonstrating their outreach efforts no later than five (5) calendar days after bid opening. The required documentation is used not only to determine the lowest, responsible bidder, but also to analyze trends in bidding and contract awards.

During this review period, EOC staff identified a trend in bidders failing to submit this required outreach documentation. That is, the second and/or third low bidders may not submit the documentation, feeling it is a waste of time and/or effort. The first low bidder may fail to submit the documentation as a means of gaining release from his/her bid. While such acts violate the integrity of SCOPE and the principles of public contracting, there is currently no penalty, beyond losing the project in question, for failing to submit SCOPE documentation.

It is recommended that SCOPe requirements be modified to include a penalty or disincentive for failing to submit required documentation as follows: ***failure to submit SCOPe outreach documentation two (2) or more times in a two year period may render a bidder or contractor ineligible to bid on City projects for a period not to exceed one (1) year.***

Contract Activity - Consultant

During this review period, \$62,123,877.04 was 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. While State, Federal and federally assisted consultant projects include mandatory goals ranging from approximately 5% to 17% for the participation of certified firms, prime consultants continue to operate under a voluntary 15% sub consultant program on City funded projects. Awards to sub consultants during this period equaled \$13,350,313.20 or 21.49% of the total consultant allocation.

Table 4
Prime Consultant and Sub Consultant Awards

	Award Amount	Percentage of Total Awards
Prime Consultants	\$48,773,563.84	78.5%
Sub Consultants	\$13,350,313.20	21.49%
Total	\$62,123,877.04	100%

As demonstrated above, the distribution of consultant dollars is weighed heavily towards the prime consultant. Conversely, certified firms received, in terms of percentages, a significantly greater proportion of sub consultant dollars than that of prime consultant dollars as shown in Tables 5 and 6, below.

Table 5
Certified and Non-Certified Participation

	Award Amount	Percentage of Total Awards
Certified Firms*	\$8,674,988.35	13.96%
Non-Certified Firms	\$53,448,888.69	86.04%

Table 6
Certified Prime Consultants verses Sub Consultants

	Award Amount	Percentage of Total Awards
Certified Prime Consultants*	\$3,128,503.57	6.41%
Certified Sub Consultants*	\$5,546,484.78	41.55%

* A further ethnic breakdown of certified firms can be found in Attachments 13 through 16.

Purchasing Division – Outreach Program and Contract Activity

During this review period, the Purchasing Division has endeavored to analyze trends in Purchase Orders (POs) issued to certified firms as well as local small emerging businesses, to identify possibilities for increasing participation of such businesses in the City’s procurement processes. Through the trend analysis, the Purchasing Division developed an Equal Opportunity/Vendor Outreach Program, initiated additional reporting criteria to incorporate restrictions imposed by bidding requirements, and re-engineered its processes to increase the participation of the groups

listed above.

As in previous semi-annual contract activity reports, Table 7 below summarizes contract activity data for the first half of Fiscal Year 2002. In order to share the successes and areas of improvement for Purchasing's outreach program, the subsequent pages summarize data by competitive bidding limits. Please note that for tables, which report contract activity, the first line in each row represents the number of Purchase Orders (PO's) issued with the respective percentage, while the second line represents dollars awarded with its respective percentage.

Table 7

Overall Contract Activity Data - First Half of Fiscal Year 2002

	Commodities		Minor Construction		Services		Total	
MBE	311	6.42%	10	22.22%	103	7.43%	424	6.75%
	\$1,430,747	2.90%	\$61,881	20.23%	\$3,196,305	13.30%	\$4,688,933	6.37%
WBE	485	10.01%	0	0.00%	66	4.76%	551	8.78%
	\$1,415,035	2.87%	\$0	0.00%	\$677,528	2.82%	\$2,092,563	2.84%
OCBE	10	0.21%	2	4.44%	4	0.29%	16	0.25%
	\$21,143	0.04%	\$3,638	1.19%	\$26,865	0.11%	\$51,646	0.07%
Subtotal	806	16.63%	12	26.67%	173	12.48%	991	15.79%
Certified	\$2,866,925	5.82%	\$65,519	21.42%	\$3,900,698	16.23%	\$6,833,142	9.28%
Non-Certified	4,040	83.37%	33	73.33%	1,213	87.52%	5,286	84.21%
	\$46,414,626	94.18%	\$240,366	78.58%	\$20,129,085	83.77%	\$66,784,077	90.72%
TOTAL	4,846	100.00%	45	100.00%	1,386	100.00%	6,277	100.00%
	\$49,281,551	100.00%	\$305,884	100.00%	\$24,029,782	100.00%	\$73,617,219	100.00%

Per Municipal Code §22.3211 and §22.3212, Chapter 2, Article 2, Division 32 titled Contracts for Personal Services, Goods, and Consultants, Procurement Specialists are required to solicit various quotes, based on the estimated dollar value of a Purchase Order, to ensure competitive pricing. Refer to Table 8 for the competitive bidding limits.

Table 8

Competitive Bidding Limits

Estimated Dollar Amount of Purchase Order	Number of Quotes Required
Below \$5,000	One Quote
\$5,000 and below \$10,000	More than one Quote
\$10,000 and below \$50,000	Five Quotes
\$50,000 and above	Requires Advertising

Reviewing the contract activity data for the first half of Fiscal Year 2002 for Purchase Orders below \$5,000 (see Table 9), for Commodities, the percent of dollars awarded is significantly higher than the overall data in Table 7. Specifically, the overall data (in Table 7) shows that only 5.82% of all dollars were awarded to certified businesses versus 15.52% in Table 9 (see bolded figures).

Table 9

Purchase Orders Below \$5,000 - First Half of Fiscal Year 2002

	Commodities		Minor Construction		Services		Total	
Certified	742	18.52%	7	25.93%	87	10.22%	836	17.12%
	\$902,525	15.52%	\$14,102	23.23%	\$210,525	11.97%	\$1,127,152	14.76%
Non-Certified	3,264	81.48%	20	74.07%	764	89.78%	4,048	82.88%
	\$4,911,767	84.48%	\$46,598	76.77%	\$1,548,556	88.03%	\$6,506,921	85.24%
TOTAL	4,006	100.00%	27	100.00%	851	100.00%	4,884	100.00%
	\$5,814,292	100.00%	\$60,700	100.00%	\$1,759,081	100.00%	\$7,634,073	100.00%

Table 10 depicts the number of Purchase Orders issued and dollars awarded for Purchase Orders valued between \$5,001 and \$10,000. In Minor Construction, POs issued to certified businesses equaled 50% of the total and, dollars awarded to certified businesses totaled 54.86% (see bolded figures in Table 10).

Table 10
Purchase Orders Between \$5,001 and \$10,000 First Half of Fiscal Year 2002

	Commodities		Minor Construction		Services		Total	
Certified	38	9.36%	4	50.00%	23	10.60%	65	10.30%
	\$283,312	8.94%	\$32,516	54.86%	\$180,724	10.60%	\$496,552	10.07%
Non-Certified	368	90.64%	4	50.00%	194	89.40%	566	89.70%
	\$2,884,619	91.06%	\$26,750	45.14%	\$1,523,476	89.40%	\$4,434,845	89.93%
TOTAL	406	100.00%	8	100.00%	217	100.00%	631	100.00%
	\$3,167,931	100.00%	\$59,266	100.00%	\$1,704,200	100.00%	\$4,931,397	100.00%

Reviewing the POs issued in the dollar range between \$10,001 and \$50,000 (see Table 11), POs issued and dollars awarded for services is higher than the overall data depicted in Table 7.

Table 11
Purchase Orders Between \$10,001 and \$50,000 - First Half of Fiscal Year 2001

	Commodities		Minor Construction		Services		Total	
Certified	21	7.75%	1	10.00%	38	16.45%	60	11.72%
	\$375,647	5.88%	\$18,900	10.17%	\$1,017,828	18.13%	\$1,412,375	11.59%
Non-Certified	250	92.25%	9	90.00%	193	83.55%	452	88.28%
	\$6,007,962	94.12%	\$167,018	89.83%	\$4,596,922	81.87%	\$10,771,902	88.41%
TOTAL	271	100.00%	10	100.00%	231	100.00%	512	100.00%
	\$6,383,609	100.00%	\$185,918	100.00%	\$5,614,750	100.00%	\$12,184,277	100.00%

Tables 9, 10, and 11 demonstrate, with some clarity, those dollar ranges and categories in which procurement specialists have achieved the greatest participation of certified vendors and points to areas needing improvement. Comparing the contract activity data by competitive bidding limits from Tables 9, 10, and 11 with the overall contract activity data in Table 7 illustrates well the challenges for outreach and equal opportunity imposed by competitive bidding requirements. Of the 6,277 Purchase Orders issued during the first half of Fiscal Year 2002, 6,027 were issued with a value below \$50,000. That translates into 96% of all Purchase Orders issued. However, the 96% of all Purchase Orders issued represents only 33.6% of all dollars awarded.

Further, taking advantage of economies of scale to ensure best pricing for the City, Purchasing strives to enter into annual requirement contracts with vendors. A requirements contract is an annual contract to provide various goods or services to City departments. From Fiscal Year 2000 to Fiscal Year 2001, Purchasing enhanced the usage of annual requirement contracts from 574 to 772 contracts, an increase of 34.5%.

Table 12 describes Purchasing's outreach efforts for the first half of Fiscal Year 2002 for POs issued above \$50,000. Contracts with an estimated value above \$50,000 must be advertised and are subject to a public bid opening. Please note that Purchasing is only responsible for Minor Construction projects with an estimated value of up to \$25,000. Thus, this category is not reflected in Table 12.

Table 12
Purchase Orders above \$50,000 - First Half of Fiscal Year 2002

	Commodities		Services		Total	
Certified	5	3.07%	25	28.74%	30	12.00%
	\$1,305,441	3.85%	\$2,491,622	16.66%	\$3,797,063	7.77%
Non-Certified	158	96.93%	62	71.26%	220	88.00%
	\$32,610,277	96.15%	\$12,460,131	83.34%	\$45,070,408	92.23%
TOTAL	163	100.00%	87	100.00%	250	100.00%
	\$33,915,718	100.00%	\$14,951,753	100.00%	\$48,867,471	100.00%

Therefore, in order to increase the participation of small emerging businesses, Purchasing will continue to work with vendors certified through the State-wide Unified Certification Program, the Diverse Emerging Vendor Outreach (DEVO) Program and the State of California Office of Small Business. Through a survey, vendors from the above groups were contacted to ascertain their interest in conducting business with the City and their knowledge of business opportunities with the City of San Diego. Vendors were also asked to identify preferred locations for workshops offered by the division.

In June of 2001, the City of San Diego's Purchasing Division, in partnership with the San Diego County Hispanic Chamber of Commerce (SDCHCC) and various local chambers, launched the Diverse Emerging Vendor Outreach (DEVO) program in order to promote and foster business diversity and inclusiveness with small emerging and local businesses. DEVO is a self-certification program following the guidelines of the Small Business Administration for small emerging businesses. Purchasing is piloting DEVO to identify and to increase participation of local small emerging businesses. Although DEVO is still in the pilot program stage, over 200 vendors were certified by end of calendar year 2001. To enhance the success of DEVO certified vendors, they will be invited to participate in the workshops mentioned above.

Specifically, for all competitive bidding ranges, Purchasing works proactively with small emerging and local vendors to inform them of business opportunities with the City, to guide them through the bidding process, and to assist them in providing excellent service to the City.

The above-described Equal Opportunity/Vendor Outreach Program is still in its formative stages. Purchasing does not anticipate significant results until the reporting period of 07/01/02 to 12/31/02. However, the efforts outlined will direct the City of San Diego towards increased participation of small, emerging, local, and diverse businesses in the procurement processes of the City.

Public Works Availability Survey

During this reporting period, EOC staff surveyed contractors identified as construction contractors through local contracting associations and the Unified Certification database. The explicit purpose of the survey was to develop a list of ready, willing and able public works contractors. The survey was sent to more than 2,000 contractors, with 322 respondents. Of the 322 respondents, 61 (22%) are located in the San Diego area. Most of the contractors indicated they worked as prime and subcontractors. For 56.76%, the estimated gross annual income is less than \$1,000,000 with 39.93% reporting an estimated gross of less than \$500,000. The largest ethnic groups were Caucasian (31.73%), Hispanic (27.56%) and Asian (20.19%). The survey and graphs of responses are provided in Attachments 17 through 19.

Program Update

On May 1, 2001, the Land Use and Housing Committee unanimously approved a pilot program for the pre-qualification of highly technical or specialized construction projects, changes to the debarment ordinance and an enhanced contractor evaluation process. Pre-qualification criteria

will include the mandatory submission of contractor workforce reports as a portion of the total review package.

Changes to the debarment ordinance include authority to enforce contractor compliance with Equal Opportunity (EO) Plans. Currently, at project award, a contractor is required to submit either a workforce report or an EO Plan. If the contractor chooses to submit a workforce report and is found to have significant under representation in his/her workforce (as compared to County Labor Force Availability), EOC staff will request the submission of an EO Plan to remedy the under representation. The newly introduced debarment language would grant EOC the authority to seek debarment of any contractor who fails to implement a submitted (whether voluntarily or by request) and approved EO Plan. Further, the approved debarment language includes a provision for seeking debarment of any contractor failing to submit required SCOPE documentation twice in a two (2) year period as previously discussed in this report.

EOC continues its outreach to the contracting community. In recent months, EOC and E&CP have been working with a coalition of local contracting associations to identify and address concerns of the contracting community related to various City of San Diego contracting policies and practices. The coalition, which includes the Association of Subcontractors, the Black Contractors Association, the Engineering and General Contractors Association, Latino Builders, and Women Construction Owners and Executives, worked on their own in developing what is

referred to as the Home Town Plan based on input from its members, with subsequent meetings with and input from staff.

The Plan addresses a wide area of construction industry related topics. Key points of the plan include:

- Pre-qualification
- Phase funding
- Subcontractor Outreach Program subcontracting goals
- Local Preference in construction bidding
- Owner Controlled Insurance Program
- Retention

A description of each of the above points, as well as the coalitions concerns and staff's response, is included in Attachment 20.

ALTERNATIVE

Do not accept the report.

Do not adopt the revision recommended for the Subcontractor Outreach Program.

Modify the revision recommended for the Subcontractor Outreach Program to a contractor debarment period of less than one year.

Modify the revision recommended for the Subcontractor Outreach Program to a contractor debarment period of more than one year.

Respectfully submitted,

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

Frank Belock, Jr.
Director
Engineering & Capital Projects Department

Approved: P. Lamont Ewell
Assistant City Manager

Ewell/Belock/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) First Half FY 2002 All Construction Projects Ethnic Distribution
 - 2) First Half FY 2002 All Construction Projects Participation Levels
 - 3) First Half FY 2002 Prime Construction Participation Levels
 - 4) First Half FY 2002 Subcontractor Construction Participation Levels
 - 5) Closed Projects - Committed and Actual Dollars by Primes
 - 6) Closed Projects - Committed and Actual Dollars by Subcontractors
 - 7) SCOPe Awards to Primes and Subs
 - 8) SCOPe Prime Contractor Bids
 - 9) SCOPe Awards – Prime Contractor Certification
 - 10) SCOPe Awards to Primes, SCOPe Prime Bids
 - 11) SCOPe - Subcontractors Bid Success Rate
 - 12) SCOPe Subcontractor Certification
 - 13) First Half FY 2002 All Consultant Projects Ethnic Distribution
 - 14) First Half FY 2002 All Consultant Projects Participation Levels
 - 15) First Half FY 2002 Prime Consultant Participation Levels
 - 16) First Half FY 2002 Subconsultant Participation Levels
 - 17) DBE Survey – Locality Results
 - 18) DBE Survey – Annual Gross Income
 - 19) DBE Survey - Ethnic Breakdown of Respondents
 - 20) Home Town Plan