

DATE ISSUED: February 26, 2003 REPORT NO. 03-038  
ATTENTION: Natural Resources & Culture Committee Agenda of March 5, 2003  
SUBJECT: Status of the Subcontractor Outreach Program (SCOPE)

SUMMARY

Issue - What is the impact of the Subcontractor Outreach Program (SCOPE) on the Capital Improvement Program?

Manager's Recommendation - Direct staff to develop alternatives to the Subcontractor Outreach Program (SCOPE).

Fiscal Impact - None with this action.

BACKGROUND

On March 6, 2000, the City Council adopted a mandatory Subcontractor Outreach Program (SCOPE) in an effort to level the playing field and provide contracting opportunities for all segments of the contracting community irrespective of size, ethnicity or gender. As adopted on March 6, 2000, SCOPE was applicable to construction projects equal to or greater than \$100,000. In January 2002, the project threshold was raised to projects equal to or greater than \$250,000. The purpose of SCOPE is to maximize subcontracting opportunities for all qualified and available firms, *and* to provide equal opportunity for all subcontractors to participate in the performance of City contracts through the mandatory use of subcontractors at a percentage level determined by a City engineer on a project by-project basis, *and* mandatory broad-based outreach in the solicitation of sub-bids by prime contractors, *and* mandatory submission of outreach documentation by the prime contractor within five (5) working days from the date of bid opening. A bidder will be rejected as non-responsive if required outreach documentation is not received within five (5) working days, *or* Indicator Points for outreach total less than 80 out of a possible 100 available points, *or* any sub-bid was rejected for unlawful discriminatory reasons, *or* if the mandatory subcontracting goals are not met. While subcontracting is mandatory, there are no conditions as to whom the work can be subcontracted (City Manager's Report NO. 01-118).

In January of 2002, the existing Minor Construction Program was re-structured to assist small and disadvantaged contractors in gaining expertise and growing their capacity in a controlled environment. Administration of the program was moved from Purchasing Division to Equal Opportunity Contracting (EOC) and the program was expanded to provide specific benefits to these businesses: 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 applies to construction projects equal to or less than \$250,000 in estimated construction costs, limits eligible bidders 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 Disadvantaged Business Enterprise (DBE) certification issued by the Unified Certification Program (formerly referred as the CalTrans Certification), was developed and is currently in use. Contractors are required to complete an intake form of basic summary information about their business, license and certification status. The contractors also submit 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 (*Table 4.1, Appendix D*). 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 (City Manager's Report NO. 01-238).

## DISCUSSION

### Overall Participation

After being adopted in March 2000, SCOPE was fully implemented in September 2000. Since its implementation, EOC staff has been monitoring SCOPE for the purpose of determining whether it is meeting the stated program objectives and, the impact it is having on the Capital Improvement Program (CIP). Approximately one year into the program, a status report was provided (City Manager's Report NO. 02-046).

In the current reporting period of July 2001 through December 2002 lasting 18 months, EOC staff performed a total of 110 SCOPE evaluations. On average 2.8 general ("prime") contractors bid on each project, supported by 21.4 subcontractor bids for each project. A total of \$191,425,677 was awarded via SCOPE, of which \$141,694,996 was awarded to prime contractors. The remaining \$49,730,681 was awarded to subcontractors. *See Figure 1.1, Appendix A.*

For purposes of tracking, EOC monitors the ethnic and gender distribution of contract dollars. During this reporting period the overall participation in the program is as follows: 83% of all contract dollars were awarded to non-certified firms, or \$158,816,529. Less than 20% of all contract dollars were awarded to DBE certified firms (herein referred to as "certified"), or \$32,609,148. *See 1.5, Appendix A.* Of the certified firms, Hispanic/Latino owned firms received

4.6%, Caucasian Women 3.6%, and African American 0.1% of the total contract dollars. See Table 1.6, Appendix B.

Consistent with previous reports, staff found that race and gender bear no statistical differentiation in the rate of success. Instead, success at both the prime contractor and subcontractor levels is directly related to the rate at which firms submit bids. See Figures 2.1, 2.2, Table 2.3 in Appendix B; and Figure 3.1, 3.3, Tables 3.4, 3.5a and 3.5b in Appendix C. Further, staff found no statistical difference between the levels of participation when comparing pre-SCOPE data to current data. For fiscal years 1996 through 2000 (the five-year period prior to the introduction of SCOPE), the City averaged 14% DBE participation. See Table 1 below.

Table 1.

	Total	Non-Certified Firms	%	Certified Firms	%
FY 96	\$405,310,304	\$358,673,955	88%	\$ 46,636,349	12%
FY 97	\$194,475,454	\$163,523,709	84%	\$ 30,951,745	16%
FY 98	\$171,842,525	\$147,037,332	86%	\$ 24,805,193	14%
FY 99	\$224,352,166	\$184,545,703	82%	\$ 39,806,463	18%
FY 00	\$213,173,435	\$189,005,437	89%	\$ 24,167,988	11%
<b>CURRENT REPORT</b>	<b>\$191,425,677</b>	<b>\$158,816,529</b>	<b>83%</b>	<b>\$ 32,609,148</b>	<b>17%</b>

#### SCOPE Impact on the City

During the reporting period, general (prime) contractors placed a total of 308 bids on 110 projects that came under the SCOPE evaluation process. Of these 110 projects, 15 encountered a failure or problem, for a failure/problem rate of 14%. Nine projects were awarded to the second or third low bidder due to the failure of the apparent lowest bidder to comply with SCOPE documentation requirements. Six other projects failed the SCOPE process: one was absorbed into a General Requirement Contract and the others were rebid. This does not at first glance seem to be significant, until we take a closer look at the fiscal impact to the City. Of the projects awarded to the second or third lowest bidder, the City paid approximately \$3.75 Million more than if the projects were awarded to the first low bidder. Of the failed projects, the rebids cost the City more than \$127,000 when advertising and staff costs are considered; the administrative cost alone is estimated at more than \$27,000. All told the City incurred more than \$3.9 Million in costs due to problems and complications with SCOPE in a span of 18 months. See Figure 1.3 and Table 1.4 in Appendix A.

### SCOPE Impact on the Contracting Community

Resulting from the required outreach and associated documentation of such outreach, there is a cost borne by contractors related to SCOPE. The cost of the advertisements, letters of solicitation, increased administrative support, etc., costs the contractors, on average, \$3,000 per project. While some of our larger contractors have the staff and resources to absorb the paper intensive processes and the costs, it is a burden on our small and medium sized contractors attempting to compete on large projects. Many such contractors do not have the staff resources or the reserve funds needed to comply with the outreach indicators. Contractors may bury the cost of complying with SCOPE, along with other administrative components, within their bid. However, this money is only recovered if you are the successful bidder. For the others, this is an expense that is not recovered. Again, the greatest burden here is placed upon the small and medium sized contractors further leading to an imbalanced playing field.

### Minor Construction Participation Update

In contrast to SCOPE projects, during the reporting period of July 2002 through December 2002, the newly implemented Minor Construction Program awarded more than \$850,000 to small and emerging businesses. Of these awards, more than \$500,000 was awarded to certified DBE firms. About 60% of firms who expressed an interest in bidding subsequently bid on projects, with a bid success rate of 50% for certified firms and 33% for non-certified firms.

Certified firms received 62% of the project dollars and non-certified firms 38%. Of the certified firms, Asian American owned firms received 22% of the contract dollars; followed by Native American owned firms at 17%, African American owned firms 11%; Caucasian Women owned firms 7%. *See Figure 4.2, 4.3, and Table 4.4, Appendix D.* EOC does not track the subcontractor participation on Minor Construction projects due to the small size of the contracts.

### CONCLUSION

At 17% DBE participation, the cost of SCOPE is disproportionate to the success of the program. The program evaluations occasionally disqualify a bidder due to their failure to comply with documentation requirements. This has led to the award of projects to higher bidders, at a cost of \$3.75 Million in 18 months. Some projects had to be rebid; and the expense of rebid has been estimated at more than \$150,000. In summary, in 18 months the City has incurred more than \$3.9 Million in costs that are directly attributable to SCOPE without a significant change in the complexion of our pool of successful contractors.

The Minor Construction Program, in contrast, showed very good results for the reporting period of July 2002 through December 2002, distributing the award of small construction contracts over an increasing pool of contractors as word of this program's success spreads. In comparison, Minor Construction awarded 62% of contract dollars to certified firms, as opposed to less than 20% in SCOPE projects. This small business assistance program has been conducive to

diversity. It is a serendipitous although not unexpected result, as many DBE firms are small and emerging.

Staff has been closely monitoring each of the above programs since their inception and has been concerned about the cost to benefit ratio for SCOPE. Conversely, staff has been encouraged by the early success of the Minor Construction Program. If the application of the program can be translated to larger projects, the success diversification of the small-contracts program may be mirrored in the main body of the City's construction contracts. As a result, staff has been and continues to explore alternatives to SCOPE with a specific interest in building on the momentum of the Minor Construction Program. Of particular interest is the small business incentive program adopted by the State of California under Assembly Bill 1084 (attached). Under said bill, State agencies give a five percent (5%) bid preference to small contractors and to large contractors who subcontract work to small businesses. Such a model seeks to follow the direction staff received from the City Council in late calendar year 2002 to create incentives for contractors who meet out objectives, as opposed to the current punitive approach. The small business incentive program is currently being studied by the Citizen's Equal Opportunity Commission and the Office of the City Attorney.

#### RECOMMENDATION

While monitoring SCOPE, staff has attempted to keep interested segments of the community apprised. To date, there is no consensus on where to go from here. It is recommended that staff be directed to gather formal input from the Citizen's Equal Opportunity Commission, the Office of the City Attorney, the contracting community, and other interested groups such as the NAACP, and report back to this Committee in 60 days with alternatives to the current SCOPE program.

Respectfully submitted,

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Office of the City Manager

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Approved: P. Lamont Ewell  
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Attachments:

- [1\) Appendix A SCOPE Update: July 2001 through December 2002 Overall Statistics](#)
- [2\) Appendix B SCOPE Update: July 2001 through December 2002 Subcontractor Statistics](#)
- [3\) Appendix C SCOPE Update: July 2001 through December 2002 Prime Contractor](#)

Statistics

- 4) *Appendix D Minor Construction Report for First Half of Fiscal Year 2003*
- 5) *State of California Assembly Bill 1084*