

DATE ISSUED: July 25, 2003 REPORT NO. 03-163  
ATTENTION: Natural Resources & Culture Committee, Agenda of July 30, 2003  
SUBJECT: Update on the Subcontractor Outreach Program (SCOPE)

SUMMARY

Issue— Should the Mayor and Council accept the staff’s recommendation for a Multi-Tiered approach to equal opportunity outreach in construction contracting?

Manager’s Recommendation – 1) Accept recommendations one through four and direct staff to immediately begin implementing the multi-tiered approach to construction contracts award. This approach includes continuing Minor Construction Program for construction contracts \$250,000 and under; Small Business Incentive Program for construction contracts from \$250,001 to \$1 Million; Design/Build for specialty construction contracts; and SCOPE for construction contracts not otherwise covered under other delivery and award programs. 2) Accept recommendation five and direct staff to begin the process of engaging the services of an Outreach Consultant. 3) Accept recommendation six, accepting self-certification of construction contractors and sub-contractors (see page 19 for complete list of recommendations).

Fiscal Impact - None with this action.

BACKGROUND

In March of 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).

On March 5, 2003, a manager's report was brought to the Committee on the status of SCOPe. In this report it was shown that SCOPe as implemented in the last two years has brought limited increases in participation on City construction contracts at considerable cost. The costs added up to almost \$4 Million in 18 months. The same report also contained updates on the participation levels in the newly implemented Minor Construction Program, designed to provide incubation of small and emerging businesses through small-business-only contracting opportunities. In comparison with SCOPe, Minor Construction enjoyed high levels of participation by disadvantaged and historically underutilized business enterprises (City Manager's Report No. 03-038). Committee directed staff at the time of the meeting to study and present an alternative to SCOPe within 60 days.

On March 5, 2003, staff was also directed by the Committee to research a similar subcontractor outreach program as implemented by the City of Los Angeles. Staff traveled to Los Angeles on March 13, 2003 to meet with the program administrators of the Subcontractor Outreach and Enforcement Section of the Office of Contract Compliance in Los Angeles. The results of the research will be presented in the following section of this report.

## DISCUSSION: SCOPe Comparative Analysis

### Subcontracting Programs in Los Angeles

The Los Angeles Subcontractor Outreach program is implemented and administered similarly to San Diego's SCOPe. The City of Los Angeles Public Works Department is directed by the Board of Public Works. Contracts are administered by the Bureau of Contract Administration, which oversees the Office of Contract Compliance in the Department of Public Works. The data contained in this report reflects activities overseen by the Public Works Department. It does not include construction projects administered by *Proprietary*, or Enterprise, departments such as the Los Angeles World Airport, the Port of Los Angeles, the Department of Water and Power, and the Recreation and Parks Department.

The Board of Public Works at the City of Los Angeles is a full-time board of five commissioners appointed by the Mayor for a four-year term. The Board meets three times a week and has sole authority to make construction contract award decisions for the Public Works Department, with staff recommendations. Criteria for awarding contracts include satisfactory completion of the Subcontractor Outreach Program.

Under the Bureau of Contract Administration, four Sections perform discrete functions within the Office of Contract Compliance: Subcontractor Outreach and Enforcement (SOE), Labor Compliance, Affirmative Action, and Centralized Certification Administration (CCA). The Affirmative Action section is equivalent to an Equal Opportunity (EO) section, overseeing contractors’ commitments to equal opportunity via an EO plan. The CCA performs certification duties within the city of Los Angeles, and is not fully parallel to the United Certification Program (UCP). The CCA certifies MBE, WBE, DBE and SLBE (Small Local Business Enterprise) in addition to the DBE certification used by the UCP. The CCA and the Affirmative Action sections also provide Certification and EO services to other departments.

Administration of Program

Enforcement of Subcontracting Outreach by City of Los Angeles’s SOE Section is comparatively stringent, with total adherence to the language of the Subcontractor Outreach Program as written in the contract, a shorter timeline and the staff able to issue fund withholdings when compliance issues arise. The major points of differences are shown in the following table:

Table 1: Program Administration

<b>Program Administration</b>	<b>Los Angeles SOE</b>	<b>San Diego SCOPE</b>
Language Adherence	Exceptions to documentation requirements are not allowed in any circumstances.	Exceptions are granted in extreme circumstances.
Language Specifications: DBE Terminology	Voluntary participation levels are set for MBE, WBE, and OBE.	Voluntary participation levels are set for DBE, DVBE and OBE.
	Language specifically requires <i>inclusion</i> of MBE, WBE, and OBE*.	Language specifically requires <i>non-exclusion</i> .
Documentation Standards	SCOPE documentation required within 3 working days.	SCOPE documentation required within 5 working days.
	All bidders are invited to submit documentation.	Only first three apparent low bidders are required to submit documentation.
	Follow-up phone calls required not less than 3 calendar days prior to bid submittal.	No date timeline given for follow-up phone calls.

<b>Program Enforcement:</b> Pre-Award	Staff makes recommendations to the Board of Public Works to reject or to award the contract to first apparent low bidder.	EOC Deputy Director has discretion to reject submittal as non-responsive, which typically leads to the rejection of a contractor's bid.
<b>Program Enforcement:</b> After Award	When issues arise: staff has the wherewithal to send a Memo to Project Coordinator who automatically withholds funds until issues of Non-Compliance are resolved.	Staff does not have enforcement authority. Staff can only make recommendations to the Resident Engineer to withhold progress payments for unresolved issues of Non-Compliance.

*\*The City of Los Angeles does not recognize DVBE as one of the historically underutilized business enterprises.*

Outreach Programs

In the City of Los Angeles, the Mayor's Office of Economic Development oversees the Minority Business Outreach Committee (MBOC). MBOC is responsible for providing outreach services to the Subcontractor Outreach Program. In addition, MBOC also provides outreach services for external partners.

- LAUSD (Los Angeles Unified School District)
- City of Los Angeles Projects
- Alameda Corridor (Transportation Authority/Port)

The following table illustrates the main MBOC functions as pertaining to Subcontractor Outreach. As shown, MBOC engages more advanced technology and is staffed by 8 analysts at full staff. EOC engages in more personalized service and is staffed by 1 analyst at full staff.

Table 2: Functional Outreach

<b>Functional Outreach</b>	<b>City of Los Angeles</b>	<b>City of San Diego</b>
Methods	<u>Business Assistance Virtual Network</u> - Allows Engineers and Project Managers to input specs data, using NAIC Codes, outlining areas of work posted on line; automatically creating a list of Certified matches of MBE/WBEs. Primes visit this web site and can view the matching potential subs. <i>Must be registered to access</i>	Provide list of publications as acceptable source of outreach.  Personal notification of business opportunity to DBE/DVBE/OBEs, Associations and Affiliates.  Free Plan Room listing provided to review project requirements prior to pre-bid.  List of UPCOMING BIDS distributed proactively and shown on City TV 24 as part of the Video Magazine.

Methods (cont.)		EOC is in the infant stages of developing a website similar to Los Angeles' BAVN. Further development is contingent on the availability of project funds.
Resources	<p>MBOC: Minority Business Outreach Committee, staffed with 8 analysts at full staff.</p> <p>MBOC is a part of the Mayor's Office of Economic Development.</p>	<p>1 Outreach Analyst embedded in EOC.</p> <p>EOC is a division under the City Manager's Office.</p>

SCOPE Outreach

SCOPE projects have specific outreach areas, aimed at assisting the firms in achieving both the mandatory subcontractor percentage and the advisory DBE percentages. The methods of calculation for the goals are similar in both programs, and are illustrated in the following table.

Table 3: Participation Determination. There are no significant differences.

<b>SCOPE:</b> Participation Determination and Enforcement	<p><u>Mandatory Participation Percentage:</u> Mandatory Subcontracting Minimum (MSM). This is determined by real time subcontracting and availability trends in the construction industry by an Engineer. This is a straight subcontracting percentage with no special consideration for M/W/D/SLBE.</p>	<p><u>Mandatory Participation Percentage:</u> Mandatory Subcontracting Outreach Participation (MSOP). This is determined by real time subcontracting and availability trends in the construction industry by an Engineer. This is a straight subcontracting percentage with no special consideration for M/W/DV/DBE</p>
	<p><u>Anticipated Participation Percentage:</u> This is a voluntary participation goal, with percentages assigned to each of the protected classes. This percentage is based on the history of participation levels.*</p>	<p><u>Anticipated Participation Percentage:</u> This is a voluntary participation goal, with percentages assigned to each of the protected classes. This percentage is based on the history of participation levels.</p> <p>The DBE level is typically set at 30% of the overall MSOP. The DVBE level at 3%</p>

*\*The representative of MBOC added further that a "soft, inconsistent formula" is used to calculate this goal.*

In both programs, outreach indicators are used to award points to a contractor’s outreach and documentation efforts. At each indicator, further detailed outreach is provided by staff in both programs. Indicator-driven outreach is shown in the following table. As shown, the City of Los Angeles does not engage in point-by-point outreach and support services beyond that which is supplied by MBOC. Lacking a web-based resource the EOC analyst relies on personal contact instead.

Table 4: SCOPe-Driven Outreach

SCOPe Indicator	City of Los Angeles	City of San Diego
1. Achievement of Advisory DBE/DVBE/OBE subcontractor participation levels	N/A	For large projects, or upon request: A. Conduct survey as a method to measure level of interested DBE/DVBE and OBE subcontractors. B. Identify & select specific subcontracting items of project and customizes a trades list of DBE/ DVBE/OBEs extracted from CALTRANS, DGS & the MINOR CONSTRUCTION PROGRAM, matching subcontracting items.
2. Pre-bid meeting attendance	N/A	For large projects, or upon request: A. Distribution of customized trades list. B. Prime/Subcontractor networking "Mixer".
3. Identification of subcontracting work	N/A	Performed at <b>Indicator 1</b>
4. Broad-based Advertisement	N/A	Performed <i>prior to</i> <b>Indicator 1</b>
5. Written Notice to subcontractors	N/A	N/A
6. Follow up to initial solicitations	N/A	Outreach Analyst answers questions, provides copies of DBE/DVBE/OBE customized trades list, upon request, and maintains telephone logs.
7. Provision of plans, specifications & requirements	N/A	Performed <i>prior to</i> <b>Indicator 1</b>

Subcontractor Substitution

The City of San Diego, upon receipt of a request by a general contractor for subcontractor substitution, stringently requires full compliance with California Public Contract Code, Sections 4100-4114, against illegal subcontractor substitution, with absolutely no exceptions. The City of Los Angeles, upon receipt of a request by a general contractor for subcontractor substitution, additionally requires the general contractor to perform what is referred to as a “Mini Good-Faith Effort” leading to the award of that sub-contract. The general contractor, under this Mini Good-Faith requirement, must send bid solicitations to some of each of the following: MBE, WBE, and OBE. The sub-contract is to be awarded to the sub-bidder whose bid is *closest* to the original bid rather than the *lowest* bid.

Resources

The City of Los Angeles, due to its larger geographic sphere of administration and population, has assigned more staff and budgetary resources to the Office of Contract Compliance. A brief comparative analysis is shown in the following table.

Table 5: Resources

<b>Staffing Levels</b>	<b>Los Angeles Office of Contract Compliance</b>	<b>San Diego Equal Opportunity Contracting</b>
SCOPE	8 Analysts committed solely to SCOPE.	6 Analysts who monitor this program.
General Contract Compliance	2 independent sections consisting of 16 staff members. Clerical pool of 9. No involvement in consultant selection, monitoring or enforcement.  NOTE: these 16 positions include the 8 positions identified above for SCOPE review.	Same 6 Analysts, with a Clerical Pool of 2. The same staff also engages in consultant selection, monitoring and enforcement.
Certification	1 independent section consisting of 4 analysts.	1 certification officer.
<b>Budget FY 03</b>	Office of Contract Compliance + MBOC Budget = \$4,307,082	EOC Budget = \$2,518,770. Available for outreach activities = \$1,824,734

The variance in budget dollars between Los Angeles and San Diego, as shown, is \$2,482,347.

Results of Subcontractor Outreach Programs

Courtesy of the City of Los Angeles staff, a comparative analysis of participation levels between Los Angeles and San Diego can be made. The result of the analysis is in Tables 8 and 9.

Detailed breakdown by classified groups is shown in Attachment 1, Figures 1.2 and 1.4. A graphical representation of the data is included as Attachment 1, Figures 1.1 and 1.3.

In March of 2000, the Subcontractor Outreach Program (SCOPE) was implemented in San Diego. In the fiscal year immediately following the implementation of SCOPE the City of San Diego experienced a sudden drop in participation levels, six percentage points, from 11% to 5%.

The average participation levels over the last five fiscal years for both cities are not significantly different except in fiscal year 2001, when Los Angeles experienced a surge in subcontractor participation with no changes in policy. Staff in Los Angeles attribute the rise to more than 20% DBE participation to an increase of municipal building projects such as libraries, police dispatch centers, and fire stations. These projects by their nature are more conducive to subcontractor participation. In contrast, projects such as underground utilities, do not lend themselves to high levels of subcontracting. Information provided by industry leaders supports the assertion that there is greater diversity within the building trades than there is in undergrounding or pipeline related work. Without the data from the watershed year, the average participation levels run closer together (see Table 9). In recent years, 82% of City of San Diego projects have been pipeline or related projects. By inference, one would speculate that success is derived in larger part from the types of projects, with the types of programs administered playing a lesser, albeit important role. A sampling of the recent SCOPE projects' assigned and achieved goals supports this assertion as well:

Table 6: Underground vs Above-ground projects

	<b>Mandatory Goal Assigned</b>	<b>Subcontracting Met</b>	<b>Variance</b>
<i>Above-Ground Projects</i>	27.60%	49.92%	<b>22.32%</b>
<i>Horizontal Projects</i>	18.40%	26.64%	<b>10.24%</b>
<b>Variance</b>	<b>9.2%</b>	<b>23.28%</b>	<b>13.08%</b>

From Table 6, it is clear that more subcontracting exists in the above-ground projects. In fact, general contractors were able to sublet 22.32% more than the 27.60% mandated, and this amount exceeds the subcontracting achieved by underground projects by 13.08%. *Of the Mandatory Goal Assigned, 30% is always assigned to DBE and 3% DVBE. The remaining 67% is assigned to OBE<sup>1</sup>.*

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<sup>1</sup>For the reporting period of January 2003 through July 2003, projects were sampled for DBE and DVBE Aspiration Goals. The representative DBE Advisory Goals fall in the 3% to 9% range, and of the 21 general contractors sampled, the average DBE participation achieved is 6%. The representative DVBE Advisory Goals is generally 1%, and of the 21 general contractors sampled, the average DVBE participation achieved is 3%. Of the eight projects sampled, six were water and/or sewer projects, and two building projects. Of the six water and/or sewer projects, the average DBE Advisory Goal assigned is 5%; general contractors sampled on average did not reach this goal at 2%. Of the two building projects, the average DBE Advisory Goal assigned is 7%; general contractors sampled on average did not reach this goal at 2%. The average DVBE goal for both types of projects was 1%. This is generally not met, of the 21 general contractors sampled for 8 projects, only three utilized any DVBE; two at 1%, and one at 43%.



It is also important to note that while Tables 7, 8, and 9 of this report represent percentages of the total contracted dollars, ***SCOPE is a subcontractor program***. Total dollars (prime contractor and subcontractors combined) were shown for the City of San Diego in an effort to make a level comparison to the City of Los Angeles as that agency provided total contract dollars. However, no component of either San Diego or Los Angeles' SCOPE programs are written or intended to increase diverse participation at the prime contractor level. The goals set and outreach efforts required are all related to the use of subcontractors. And, as shown in past reports from EOC, the bulk of the contracted dollars remain with the prime contractors. The March 5, 2003 Manager's Report, No. 03-038, shows the distribution of subcontracting dollars for SCOPE projects over an eighteen- month period. For this period, of 110 awards, 15 projects had encountered programmatic (SCOPE-related) problems which led to either award to higher bidders, or to outright failure of the bid, leading to an estimated loss of \$3.9 Million in increased contractual and administrative expenses by the City. Additionally, 24 bidders were rejected by Engineering and Capital Projects Contract Administrator for non-programmatic issues not related to SCOPE, such as failure to submit a complete bid, late bids, or similar other contractor errors. These non-SCOPE contractor errors led to rejections that resulted in an estimated loss of \$2.6 Million in increased contractual costs.

Table 7: City of Los Angeles Participation in Department of Public Works Construction Projects (some of which are eligible for SCOPE)

<b>Year</b>	<b>Total Contract \$</b>	<b>Non-Certified \$</b>	<b>Certified \$</b>	<b>Certified %</b>
1998	\$ 59,994,895.00	\$ 51,737,393.00	\$ 8,257,502.00	13.8%
1999	\$ 173,195,248.00	\$ 148,987,230.00	\$ 24,208,018.00	14.0%
2000	\$ 80,603,796.00	\$ 68,730,808.00	\$ 11,872,988.00	14.7%
2001	\$ 213,142,025.00	\$ 168,836,343.00	\$ 44,305,682.00	20.8%
2002	\$ 113,666,471.00	\$ 102,421,894.00	\$ 11,244,577.00	9.9%
<b>Total</b>	<b>\$ 640,602,435.00</b>	<b>\$ 540,713,668.00</b>	<b>\$ 99,888,767.00</b>	
<b>Average</b>	<b>\$ 128,120,487.00</b>	<b>\$ 108,142,733.60</b>	<b>\$ 19,977,753.40</b>	<b>15.6%</b>

Table 8: City of San Diego Participation in CIP Projects, (some of which are eligible for SCOPE)

<b>Year</b>	<b>Total Contract \$</b>	<b>Non-Certified \$</b>	<b>Certified \$</b>	<b>Certified %</b>
1998	\$ 171,842,525.00	\$ 147,037,332.00	\$ 24,805,193.00	14.4%
1999	\$ 224,352,166.00	\$ 184,545,703.00	\$ 39,806,463.00	17.7%
2000	\$ 213,173,435.00	\$ 189,005,437.00	\$ 23,771,889.00	11.2%
2001	\$ 251,075,100.54	\$ 238,228,118.17	\$ 12,846,982.37	5.1%
2002	\$ 194,784,090.92	\$ 182,465,106.19	\$ 12,318,984.73	6.3%
<b>Total</b>	<b>\$ 1,055,227,317.46</b>	<b>\$ 941,281,696.36</b>	<b>\$ 113,549,512.10</b>	
<b>Average</b>	<b>\$ 211,045,463.49</b>	<b>\$ 188,256,339.27</b>	<b>\$ 22,709,902.42</b>	<b>10.8%</b>

Table 9: Cities of Los Angeles and San Diego Participation for FY 1998-2000 and 2002 (*Los Angeles watershed year data has been removed from this matrix*).

<b>Year</b>	<b>Los Angeles Total Contract \$</b>	<b>San Diego Total Contract \$</b>	<b>Los Angeles Certified %</b>	<b>San Diego Certified %</b>
1998	\$ 59,994,895.00	\$ 171,842,525.00	13.8%	14.4%
1999	\$ 173,195,248.00	\$ 224,352,166.00	14.0%	17.7%
2000	\$ 80,603,796.00	\$ 213,173,435.00	14.7%	11.2%
2002	\$ 113,666,471.00	\$ 194,784,090.92	9.9%	6.3%
<b>Total</b>	<b>\$ 427,460,410.00</b>	<b>\$ 804,152,216.92</b>	<b>13.0%</b>	<b>12.5%</b>
<b>Average</b>	<b>\$ 106,865,102.50</b>	<b>\$ 201,038,054.23</b>	<b>13.0%</b>	<b>12.5%</b>

The staffing levels of Los Angeles Office of Contract Compliance allowed reporting capabilities in tracking *Close-Out* amounts as well as the *Committed* amounts. In Table 10, a comparison is made between the *Committed* participation and *Close-Out* Participation in FY 2002 in Los Angeles. In Table 11, the same is shown for San Diego.

Table 10: City of Los Angeles FY 2002 Committed vs Close-Out. This shows projects that were *committed* in FY 2002, through their project life cycle to close-out. As shown, the variance between commitment and close-out are not significant. A graphical analysis is available as Attachment 2, Figures 2.1 through 2.4.

<b>CERTIFICATION</b>	<b>Committed %</b>	<b>Close-Out %</b>	<b>Variance</b>
<b>Not Certified</b>	<b>90.11%</b>	<b>90.47%</b>	<b>0.36%</b>
<b>Certified Firms</b>	<b>9.89%</b>	<b>9.53%</b>	<b>-0.36%</b>
African American	0.73%	0.71%	-0.01%
Caucasian Female	2.28%	2.46%	0.18%
Latino	5.20%	4.62%	-0.58%
Native American	0.49%	0.32%	-0.17%
Asian Pacific Islander	1.19%	1.42%	0.23%
<b>TOTAL</b>	<b>100.00%</b>	<b>100.00%</b>	

Table 11: City of San Diego FY 2002 Committed vs Close-Out. This shows projects that *closed* in the first half of FY 2002 (the time frame for which the data is available) and not projects that were *committed* in the first half of FY 2002. No other report on close-out participation is available at this time. As shown, the amounts between commitment and close-out are significant. During the life-cycle of these projects, Certified Latino Firms received more contract dollars than originally committed. A graphical analysis is available as Attachment 2, Figures 2.5 through 2.8.

<b>CERTIFICATION</b>	<b>Committed %</b>	<b>Close-Out %</b>	<b>Variance</b>
<b>Not Certified</b>	<b>86.42%</b>	<b>79.4%</b>	<b>-7.05%</b>
<b>Certified Firms</b>	<b>13.58%</b>	<b>20.6%</b>	<b>7.05%</b>
African American	0.63%	0.5%	-0.13%
Caucasian Female	2.74%	1.7%	-1.09%
Latino	10.21%	18.5%	8.27%
Native American	0.00%	0.0%	0.00%
Disabled Veterans	0.00%	0.0%	0.00%
Asian Pacific Islander	0.00%	0.0%	0.00%
<b>TOTAL</b>	<b>100.00%</b>	<b>100.0%</b>	<b>0.00%</b>

## Efficiency Measures

For each percentage point of certified firm participation, the resources used are as illustrated in the following table:

Table 12: Dollars and Percentage Participation

	<b>FY 03 Budget</b>	<b>FY 02 % Participation</b>	<b>\$ per % Point</b>
Los Angeles	\$ 4,307,082	9.89%	\$ 435,498.69
San Diego	\$ 1,824,735	6.32%	\$ 288,723.81
<b>Variance</b>	\$ 2,482,347	3.57%	\$ 695,335.43

As shown, for each one percent in historically underutilized business enterprise participation, the City of Los Angeles allocated more than \$435,000; San Diego allocated less than \$300,000. For the 3.57 percentage points of variance in participation, each percentage gain used more than \$690,000 in the variance of funds.

### DISCUSSION: Other Agency DBE Participation

In addition to studying the City of Los Angeles, staff has been meeting and working with other local agencies in an effort to identify alternative program methods and levels of success. Besides, Los Angeles, another model often spoken of is the San Diego Unified School District (SDUSD) program. With limited internal staff dedicated to equal opportunity contracting, the school board awarded an outreach contract to the Latino Builders Industry Association (LBIA) to conduct outreach for projects funded with Proposition MM dollars. Proposition MM dollars are spent on new construction and repairs for schools, building type projects which, again, lend themselves to greater levels of diverse participation.

For these projects, the LBIA and the District utilizes an Emerging Business Enterprise (EBE) certification program in which firms self-certify as Emerging Business Enterprises. EBE includes Disadvantaged Business Enterprises (DBE), Disabled Veteran Owned Business Enterprises (DVBE) Women-Owned Business Enterprises (WBE), and Local-Small Businesses (SBE). In contrast, the City of San Diego tracks and recognizes DBE, MBE, WBE and DVBE firms that are formally certified by recognized certifying entities. Local small participation is not tracked at all.

Table 13: Participation Data as reported by LBIA SDUSD Outreach Program. July 2001 to February 2003, calculated using rates of self-registered certifications.

<b>SELF CERTIFICATION</b>	<b>AWARDS</b>	<b>%</b>
DBE	\$ 29,038,986.40	9.63%
WBE	\$ 17,429,422.78	5.78%
DVBE	\$ 1,085,569.59	0.36%
SBE	\$ 76,637,803.29	24.42%
<b>Total Self Certified Firms</b>	<b>\$ 121,191,782.30</b>	<b>40.19%</b>
<b>TOTAL</b>	<b>\$ 301,547,107.00</b>	<b>100.00%</b>

NOTE: Absent local-small, the self certified participation equals \$47,553,978.77 (15.77%).

In response to the data contained in Table 13, staff requested a list of the contractors (primes and subcontractors) used by SDUSD on Proposition MM projects. Table 14 below shows the total number of firms represented by SDUSD as having worked on Proposition MM projects over a two year period. A comparison is then made as to how many of those firms are self-certified as EBE through LBIA compared to how many of them are formally certified through the State’s Unified Certification Program (“UCP”; formerly known as CalTrans Certification). In doing so, staff found that 116 self-certified firms comprise the 40.19% participation shown in Table 13. And, of those 116 firms, only 45 (38.7%) are currently formally certified through the UCP. Although the dollar amounts awarded to each of those firms was not available to staff, it can be surmised that SDUSD’s levels of participation would decrease significantly if they tracked data using the City standard of tracking formally certified DBE, MBE, WBE and DVBE firms only. The City of San Diego tracks local small firms as OBE - not certified - and does not recognize self-certification.

Anecdotal evidence has shown that certain small businesses find the State certification program (UCP) to be cumbersome; therefore, although they may be eligible and qualified, the business owner chooses not to be certified via the state-wide process. SDUSD staff has indicated that the benefit of accessing such firms as those just described outweighed the potential of fraud that can come with self-certification. The only certification accepted currently by the City is the UCP or state-wide process, and all statistics presented in this report pertaining to City contractors show only those who have been UCP certified.

Table 14: Participation Data as reported by LBIA SDUSD Outreach Program. July 2001 to

February 2003, calculated using rates of certifications granted by the Unified Certification Program.

	<b>Discrete # OF Firms</b>	<b>UCP Certified</b>	<b>% UCP</b>	<b>Self Certified</b>	<b>% Self</b>
<b>BOTH YEARS</b>	<b>623</b>	<b>45</b>	<b>7.2%</b>	<b>116</b>	<b>18.6%</b>

NOTE: The percentages noted in Table 14 present the number of firms not the percentage of dollars awarded as shown in Table 13. Staff was unable to obtain the dollars awarded to each of the 623 firms and was therefore unable to determine the percentage of dollars that the UCP certified firms received.

#### Minor Construction Program

Although the intent of SCOPe was to increase participation by underutilized business enterprises in public works, this intent has not been fulfilled in practice. In comparison with another large municipality in California, it is evident that similar programs, even when implemented in a different business environment and with 100% more staff, have not achieved extraordinary success since the passage of Proposition 209.

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 (Manager's Report No. 03-038). Based on direction from Committee staff has given consideration to raising the threshold of the Minor Construction Program from \$250,000 to \$500,000 in an effort to further increase opportunity for small and diverse contractors. Due to the recent rapid expansion of the program, EOC feels it would be advisable to give the staff assigned to Minor Construction time to establish and streamline the bilateral contracts administration and contractor registration process before further expansion can be optimized with the current available staff.

Similarly, staff finds that it is advisable to allow contractors to stabilize at the current program threshold. Minor Construction is a *small* business program, designed to meet both the small business needs *and* capacity. Many of the contractors enrolled in MCP are relatively new to public works construction. It is important to introduce these firms first to the smaller projects of less complexity and economic risk. The complexity of the work, bidding and use of subcontractors increases exponentially as the dollar value of the project increases. Input from the construction industry indicates that projects approaching \$500,000 are not small but rather mid or medium size projects which our contractors may not be ready for. MCP staff will continue work with other programs, such as Mentor-Protégé, in identifying a gradual method of graduating MCP contractors to mid-sized projects in a monitored environment.

In the meantime, at the current threshold, EOC staff will continue to seek to maximize opportunities for training and experience for small and emerging contractors seeking to do public

works construction. During the one-year of operation, MCP successfully provided a sheltered environment for bidding while collecting insight on how best to structure program assistance to address deficiencies in business and technical areas for the 145 firms in the program. Several business and technical areas of contracting were defined. One key area of contracting that can “make or break” project success is the correct estimation of project scope and cost. Many small and emerging firms, while quite proficient in contracting skills, lack the expertise and experience in accurately assessing total project scope and assessing costs. This lack of expertise has negatively impacted several of MCP firms.

The Engineering and General Contractors Association (EGCA), in a series of ongoing discussions designed to assist the Minor Construction Program, has suggested a mentor program to assist these small and emerging firms with their business and technical skills. By design, the structure of the mentoring is a group setting. The program is designed with three main components:

### 1. Project Bid and Management Services

At MCP’s direction, on a project by project basis, one of ECGA’s “core” group of contractors will attend project pre-bid meetings, assist in asking key questions of City engineers and project managers, then meet with MCP bidders after the meeting to review key elements of the bid package to assure bidders understood all that is required on that specific project. After bid award, that same mentor will be available to the chosen bidder to assist in answering questions or resolving issues that arise.

### 2. Education and Training Services

EGCA also proposes to organize and present to interested MCP clients, specific 3-hour afternoon workshops on 8-10 important topics, including: analyzing bid documents, estimating techniques and best practices, project scheduling, safety and OSHA, negotiating, time management, site management, etc. These 8-10 sessions will be presented during October and November, 2003, in a City facility for a reasonable cost (\$25-49 per session). Persons completing 80% of the workshops will be issued a joint EGCA-City certificate of completion.

### 3. Association Membership

The EGCA Board has approved a special membership fee for MCP clients of \$200 for the first year. Membership advantages include a coupon book from EGCA Affiliate Members (materials and equipment suppliers and others) worth thousands of dollars in goods and services. EGCA also plans to award a “Small Emerging Contractor of the Year” trophy each January.

It is our belief that this program will enable those firms wishing to advance to larger, more complex projects to do so, inconsistent with our commitment to assist MCP contractors in graduating to mid-size projects. And for those firms who wish to expand their contracting expertise from one specialty to another, the program should enable them to “test” the market with some security before venturing into a higher contract level.

### Small Business Incentive Program

Programs designed to support and further small businesses often have the added effect of benefiting the broadest population. Based on the data and information contained in City Manager's Report No. 03-038, EOC finds sufficient grounds to pilot a small business program that, by design would have a higher probability of success. It is therefore proposed that the City adopt a small business incentive program, similar to the State of California program (Assembly Bill 1084, Attachment 3). Under such a program, contractors would receive a bid assistance of five percent (5%) if they reach a predetermined level of small business participation. It is further recommended that said pilot be conducted on construction projects valued over \$250,000 and under \$1,000,000 and selected pipeline projects (group jobs). Such a model also 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 threshold establishment is in keeping with the City Attorney's opinion as submitted to the Natural Resources and Culture Committee on April 28, 2003, which recommends, that the Council "adopt an ordinance which carves out an exception to Section 94 for construction contracts ranging from \$250,000 to an amount to be established based on economic data". After EOC staff researched construction contracts from Fiscal Years 2001 and 2002, the two years from which data is available, it found that the most common size of projects have been those under \$250,000 (129), followed by those between \$250,001 and \$1,000,000 (63) and those between \$1,000,001 and \$10,000,000 (55). Projects under \$250,000 are under the preserve of Minor Construction, which focuses on small and emerging *prime* contractors.

Similar to SCOPE, an engineer would, on a project-by-project basis, determine the anticipated small business participation levels for applicable projects. For purposes of calculating the lowest bidder, staff would subtract five percent (5%) from the bids of all bidders achieving the stated level of small business participation. As stated, this is a voluntary program with incentives to contractors who choose to support small business.

In an effort to level the playing field, eligible small firms bidding as prime contractors would receive the five percent (5%) adjustment regardless of subcontracting levels. Typically, the bids of smaller businesses are higher than their larger competitors. Small firms do not have the benefit of such things as owning their own equipment, supplier discounts for bulk or repeat business. As a result, the business expenses of the small firms are higher, leading to higher, less competitive bids. Under such a program, small contractors may see increased opportunity thus, allowing them to build their businesses to the competitive level of the larger firms.

While many small business programs are fairly new in implementation, the early data, as supported by this report, is good and forecasts a promising future. Although by its design such a program represents a cost to the City, the cost is only incurred if and when contractors meet the City's stated goals. In contrast, the costs incurred in administering SCOPE have not resulted in a statistically meaningful outcome. Further, there is a cost borne by contractors related to SCOPE. The cost of the advertisements, letters of solicitation, increased administrative support, etc., cost the contractors on average \$3,000 per project. In many cases, these costs are passed on to the City in the form of higher bids. The small business program removes this barrier. Conceivably, the cost of the five percent (5%) incentive may be offset by the lower bids resulting from the reduction in bureaucratic, paper intensive processes.



## Other Small Business Programs in California Local Governments and Agencies

### *City of Los Angeles, SLBE (Small Local Business Enterprise):*

Companies certified as a Small Local Business with the City of Los Angeles are given a preference applied to bid contracts of \$100,000 or less. A 10% preference (discount) is given to the bids of SLB certified companies. The preference is determined by taking 10% of the lowest bid that is proposed by a non-certified company, and subtracting that amount from the bid of the SLB certified company. If after the preference the SLBE's bid is less than or equal to the lowest non-certified company's bid, the SLB will be awarded the contract.

### *The State of California Department of General Services, Small Business Program:*

Small Businesses certified by the DGS qualify for a 5% bid preference on applicable state contracts. The firms are eligible for benefits under the Prompt Payment Act including higher interest penalties for late, undisputed invoice payments (except for construction firms which are addressed under Public Contract Code 10261.5).

### Additional Information

In addition to the efforts discussed above, EOC staff has continued to work with the Citizen's Equal Opportunity Commission (CEOC), staff from the office of the City Attorney and the Engineers and Capital Projects Department (E&CP) in identifying and removing artificial barriers to inclusion. One such barrier is failure to pay promptly. Under the Public Contract Code of California and as articulated in City of San Diego construction contracts, upon receiving payment from the City, prime contractors are required, in turn, to pay their subcontractors within ten days of receiving said payment. In response to subcontractor concerns that such payments are not always forthcoming, EOC and the City Attorney drafted enforcement language granting staff the authority to withhold progress payments, impose fines and/or debar prime contractors who fail to pay their subcontractors in a timely manner, without cause. See Attachment 4, Prompt Payment Contract Language Provision. The CEOC reviewed the proposed contract language and supports the change in concept. It is anticipated that finalized contract will be approved at the August, 2003 meeting of the Commission.

The proposed enhancements to the Prompt Payment Provision will be of great benefit to small and emerging subcontractors who often lack the financial wherewithal to survive protracted delays in payment for work completed.

Further, staff from EOC and E&CP has been working with the construction industry in developing criteria for more effective use of alternative delivery systems. Particularly, Design/Build (D/B). While the specifics of the D/B concept and its applicability to various project types are discussed in a separate report, it is also highlighted here with an emphasis on sub-consultant and subcontractor utilization.

Under D/B, after project conceptualization, the City issues a Request for Proposals (RFP) for both design and construction of the project. As stated above, the proposer(s) may be one firm or a joint-venture team. Proposers are evaluated by a team of City staffers on: the proposals

submitted, the strength of their verbal presentation/interview and prices. Firms are evaluated and rated using pre-defined criteria which typically includes a rating of key employees, knowledge and understanding of the project, strength of the overall team (including any sub-consultants and subcontractors), and demonstration of previously completed projects.

As described, D/B is a more subjective methodology than the traditional low-bid system (Design/Bid/Build). However, it is the subjective nature of the process that provides staff with the ability to determine and evaluate those factors that we think are important to the project beyond the cost. For example, the composition of the D/B team; that is, the complement of sub-consultants and subcontractors. In the proposal and interview portions of the process, D/B entities are asked to articulate past efforts and successes in formulating a well-rounded team. In addition, each firm is asked to present a well-rounded team for the project in question. If a team has not been assembled, the entity must describe the method through which they will build a well-rounded team. This can be achieved for example by listing an outreach sub-consultant as part of the team.

Both the Prompt Payment Provision and the use of Design/Build enhance staff's ability to ensure that contractors selected to do business with the City of San Diego are responsive to issues of fairness and equality.

At the March 5, 2003 meeting of the NR&C, during discussion of the SCOPe report, staff was asked to give consideration to hiring an outreach consultant to assist in identifying and outreaching to under-represented segments of the contracting community. In response, staff has drafted a Request for Proposal, with input from the Equal Opportunity Executive Oversight Committee.

Based on input received from the Committee and a review of outreach efforts engaged in by other agencies, staff finds that such a contract, in an effort to ensure success, should tie payment to achievement of deliverables. At the first delivery point, the City must see a marked increase in the composition of bidders at the prime and/or subcontractor levels. As the second deliverable, the increase in diverse bidders must then translate into increased awards to under-represented segments of the population. All bidders and awardees would be classified using the City's accepted method of identifying and tracking certification in place at the time the City enters into the outreach agreement (e.g. we currently acknowledge UCP Certified Disadvantaged Business Enterprises (DBE) with all others tracked as Non-Certified or Other Business Enterprises (OBE)).

As there is no funding earmarked for this efforts, the funds would be drawn from the E&CP, MWWD and Water Department Capital Improvements Program. The estimated cost is \$150,000 for one year.

## RECOMMENDATION

In its research, staff has found that there is not currently any one process that will effectively address Equal Opportunity for all project types. Instead, a mix of solutions is appropriate and necessary in maximizing success. As such, staff recommends a multi-faceted approach that includes:

- 1) Minor Construction Program to provide prime contracting opportunities to small, emerging contractors on projects in estimated value of \$250,000 and under.
- 2) Pilot a Small Business Preference Program to provide subcontracting opportunities to small, emerging and disadvantaged contractors on projects estimated in value between \$250,001 and \$1 Million and selected pipeline projects (group jobs), with direction to staff to return to Committee in twelve (12) months with a status report; and, to draft a City Charter change initiative to be sent to Rules Committee for considered placement on the November, 2004 ballot if the program is found to be effective after the period of twelve (12) months.
- 3) Design/Build for appropriate projects based on size and scope of work.
- 4) Subcontractor Outreach Program (SCOPE) for projects not covered by other programs and/or delivery systems. While staff has identified some areas of concern with SCOPE, after discussions with the contracting community and other interested parties, no viable alternative to SCOPE has been identified. That is, other than these options discussed above, which have limited applications, there has not been a program identified that can universally replace SCOPE at this time.
- 5) Outreach Consultant to assist staff in identifying, outreaching to, and utilizing a more expansive and diverse pool of prime and subcontractors.
- 6) Implement a self-certification program, administered by EOC staff, in an effort to more accurately track the representation of our bidder and sub-bidder pool [NOTE: staff will also continue to certify contractors on behalf of the UCP consistent with our agreement with the State of California, CalTrans Department].

Upon review by the Citizen's Equal Opportunity Commission on July 3, 2003, the commissioners voted 7-1-2 in favor of supporting recommendation numbers one, two, three and five; the commissioners voted 7-3 in favor of supporting recommendation number four.

[Note: Recommendation 6 was added after the CEOC meeting, based upon input from the Equal Opportunity Executive Oversight Committee].

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

Ewell/SS

Attachments:

1. [Attachment 1, Comparative Analysis of Subcontracting Outreach Programs: Results and Trends](#)
2. [Attachment 2, Committed and Close-Out Participation Summary](#)
3. [Attachment 3, Assembly Bill 1084](#)
4. [Attachment 4, Prompt Payment Contract Language Provision](#)