

DATE ISSUED: August 6 2004

REPORT NO. 04-183

ATTENTION: Natural Resources & Culture Committee  
Agenda of August 11, 2004

SUBJECT: Update on the Subcontractor Outreach Program (SCOPE) Language and  
Administration

SUMMARY

Issue - Should the Committee accept the staff's recommendation for changes in SCOPE language?

Manager's Recommendation - Accept the recommendation.

Other Recommendations - None.

Fiscal Impact - None.

BACKGROUND

At the July 30, 2003 meeting of the Natural Resources and Culture Committee (NR&C), staff presented a report on the status of the Subcontractor Outreach Program (SCOPE) currently administered by the Office of Equal Opportunity Contracting (CMR No. 03-163). In said report, staff compared the program with a similar program administered by the City of Los Angeles. While there were slight variances in the language of the two programs, it was found that the overall results, as borne out by the participation levels each agency achieved, were statistically identical.

Based on the lack of success of SCOPE to date and no indication that adjustments to the program would lead to a meaningful outcome, staff recommended that the program be rescinded. However, after hearing testimony on the matter, staff was directed to instead modify the program, consistent with the program administered by the City of Los Angeles. After conferring with the Office of the City Attorney for the City of San Diego and with staff in Los Angeles, Equal Opportunity Contracting (EOC) staff has developed program language changes for consideration.

## DISCUSSION

In a side-by-side comparison of the San Diego and Los Angeles programs, staff found differences that are not likely to significantly effect the distribution of dollars to subcontractors. Two differences were found and incorporated, in draft form, into the City's program. First, San Diego's language calls for outreach to a "broad base" of contractors, which includes Disadvantaged Business Enterprises (DBE), Disabled Veteran Business Enterprises (DVBE) and Other Business Enterprises (OBE), with OBE representing firms that either are not eligible to or have chosen not to become formally certified. Los Angeles in comparison calls for the inclusion of Minority Owned Business Enterprises (MBE), Women Owned Business Enterprises (WBE) and OBEs.

Under the current rules of the formal Unified Certification Program (UCP), all agencies in California certify and/or accept the DBE certification which is defined as firms that are at least 51% owned by one or more socially and economically disadvantaged individuals (the City of San Diego is a certifying agency). In addition, some agencies, such as the City of Los Angeles and the State of California also administer and certify their own MBE/WBE programs. Such MBE/WBE programs utilize the same basic definition of social and economic disadvantage as the DBE program. The distinction is in the sizing standard, with the MBE/WBE programs accepting higher income levels. That is, the MBE/WBE certification is typically used for those socially disadvantaged business owners that are too large to be certified as DBE with annual gross receipts and/or personal net worth exceeding the DBE size standard.

In practicality, both the City of San Diego and the City of Los Angeles, when tracking the participation of prime and subcontractors, track the race and gender of all certified firms, whether they are DBE, MBE or WBE. However, for clarity, staff proposes to amend San Diego's program language to include MBE and WBE without – unlike Los Angeles, eliminating the references to DBE. As alluded to above, DBE firms are smaller than MBE and WBE firms and, in the opinion of staff, in greater need of consideration.

Further, as stated above, San Diego makes specific reference to the inclusion of DVBEs. While DVBEs are not noted in the Los Angeles model, EOC staff has a standing commitment to actively assist and support our local community of disabled veterans. As such, the new globally inclusive language, as drafted for your consideration, encourages the use of DBE's, DVBEs, MBEs, WBEs and OBEs thus incorporating Los Angeles' language without sacrificing the existing language.

The second area of difference between the languages of the two agencies is related to the substitution of formally certified subcontractors. In Los Angeles, prime contractors wishing to substitute a listed certified firm must conduct a "mini good-faith" effort to replace said subcontractor with a like certified firm. In addition, related to this area, the Office of the City Attorney has advised staff to add additional clarifying language to the SCOPE language related to the substitution of subcontractors (SCOPE program, Section VII - Subcontractor Substitutions).

The complete SCOPE program document with the "red-lined" changes is included as Attachment 1 of this report.

## SCOPE Projects Update

From July 1, 2003 to June 31, 2004, EOC evaluated 129 sets of documentation submitted by 62 prime contractor firms listing 2,502 sub-bids from 764 subcontractors. 94% of the SCOPE contracts were awarded to non-certified firms, an increase from the report of 2002, when 83% were awarded to non-certified firms. The similar increase of awards to non-certified firms has been shown in both the prime contractor (81% to 96%) and in subcontractor (82% to 92%) awards. Attachments 2 through 5 show the updated SCOPE bidding and awards patterns for the reporting period of fiscal year 2004.

Non-certified firms submit a significant majority of bids; 87% in prime contracts and 85% in subcontracts. Consequently non-certified firms receive a higher number of awards; 96% in prime contracts and 92% in subcontracts. Firms show similar success rates; in subcontracts, the average success rates of bids placed leading to awards is 15%. Non-certified firms have a success rate of 18%, and certified firms have a success rate of 20%, considerably higher than average. The rates given are for subcontractor bids only; submittals by certified prime contractors are too few to provide adequate data for comparison.

The data strongly suggest that bidding by certified firms lead to awards to certified firms; the decrease in awards to certified firms is strongly correlated to decrease in bids submitted from certified firms.

## SCOPE Compliance Update

Since July 1, 2001, compliance rates of SCOPE have increased. In the last City Manager's Report (No. 03-038), 14% of projects experienced problems with the initial award due to SCOPE; in the current reporting period this figure has dropped to 2%. The SCOPE-related cost to the City due to rebidding failed projects has fallen from ~\$154,000 to zero. The cost to the City due to awarding a contract to other than the lowest bidder has fallen from \$3.7 million to less than \$250,000. Of projects that encountered problems during the award phase, only one was due to SCOPE requirements. Of the 129 prime bids received, 10 were rejected; of the 10 rejected, only 4 were rejected for SCOPE, a failure rate of 3%. Other bidders were rejected for other contractual reasons.

## Small Business Incentive Program

It was anticipated that, as a part of this report, Equal Opportunity Contracting would bring to this committee a recommendation to adopt a Small Business Preference program, as first discussed at NR&C on July 30, 2003 in City Manager Report No. 03-163. As it was intended, small prime contractors and/or larger contractors utilizing a specified percentage of small subcontractors would receive a five percent (5%) bidding preference. While this program, which is modeled after the State of California's small business program has been drafted, in recent weeks, staff has become aware of another small business program model recently put into place by the Metropolitan Water District (MWD). Under the MWD model, staff establishes a mandatory small business goal for its projects. Contractor's failing to meeting this mandatory goal as rejected as non-responsive (small prime contractors are exempted). MWD is reporting early success with this approach.

Due to time considerations, staff was not able to sufficiently analyze the MWD model prior to the due date of this report. However, we find that such an analysis would be beneficial before a final

determination on a program model is made. Such an analysis would include discussions with our stakeholders through such venues as the Equal Opportunity Executive Oversight Committee (internal partners); and the Citizen's Equal Opportunity Commission and the Public Works Advisory Committee (external partners).

Further, while staff is aware that the Association of General Contractors (AGC) intends to continue its opposition to the five percent (5%) bid preference model, they have recently stated a renewed commitment to helping the City address issues of equal opportunity in contracting. Thus, it is our hope that by bringing this entire issue back to the table, particularly this second possible program model, we can develop a program that is mutually agreeable.

### CONCLUSION

Consistent with the direction received from NR&C on July 30, 2003, staff has incorporated SCOPE language changes for greater consistency with the program administered by the City of Los Angeles. As discussed, staff recommends that, while City of Los Angeles language is added, some components of the City of San Diego language should not be sacrificed. Specifically, consideration for the inclusion of DBEs and DVBEs should not be sacrificed in order to include MBEs and WBEs. Instead, it would be more appropriate to include all four categories.

If approved, the changes in the SCOPE contract language and administration will be incorporated into the existing contract documents and enforced within 60 days of acceptance of this report.

### RECOMMENDATION

Direct staff to apply and enforce the updated SCOPE contract language and administration within 60 days of this report.

### ALTERNATIVE

Do not accept the recommendations.

Respectfully submitted,

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Stacey Stevenson  
Deputy Director  
Equal Opportunity Contracting

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Approved: Richard Mendes  
Deputy City Manager

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Attachments: [1\) SCOPE Language Update](#)  
[2\) SCOPE Projects: FY 2003-2004 Update](#)  
[3\) SCOPE Awards: May 10, 2004 Update](#)  
[4\) SCOPE Prime Contractors: May 10, 2004 Update](#)  
[5\) SCOPE Subcontractors: May 10, 2004 Update](#)  
[6\) Comparison of SCOPE Failure Rates](#)