



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: August 1, 2007

REPORT NO: 07-135

ATTENTION: Rules, Open Government and Intergovernmental Relations Committee
Agenda of August 1, 2007

SUBJECT: Equal Opportunity Contracting Program

REFERENCE: 1. Non-Agenda Public Comment to City Council – May 15, 2007.
2. Memorandum from Council President Pro Tem Anthony Young to Mayor Jerry Sanders dated May 21, 2007.

REQUESTED ACTION:
None. Advisory response.

STAFF RECOMMENDATION: Accept the Report. Docket follow up report for October 2007.

SUMMARY:

During non-agenda public comment at the May 15, 2007 City Council meeting, concerns were raised regarding the status of the City's Equal Opportunity Contracting Program (EOC). In a follow-up memorandum dated, May 21, 2007 to Mayor Sanders, Council President Pro Tem Young requested a report addressing the concerns of the speaker, as well as, follow up information. This report responds to both items and identifies actions to strengthen or improve the current EOC efforts.

EOC was moved to Purchasing & Contracting Department (P&C) in fiscal year 2007 as a result of a Business Process Re-engineering (BPR) effort to maximize contracting efficiencies. As part of this effort, the City's contracting process was centralized and P&C became responsible for contracting all business opportunities in the City of San Diego. Part of the department's role in this capacity is to ensure all entities, interested in doing business with the City are provided an equal opportunity to participate in competing for City contracts and to assure non discrimination in the solicitation and the selection of vendors, suppliers, consultants and contractors. EOC's role is to monitor compliance for all Capital Improvement Projects, Architectural & Engineering Consultants. The group specifically performs the following functions to ensure compliance with related requirements:

Monitoring Prevailing and Non-Prevailing Wage Contracts

- Pre-Award – Review and approve all action documents, good faith efforts (Subcontractor Outreach Program (SCOPE) or Federal Requirements) workforce report analysis and

historical issues. Notify City Council of findings, and distribute project specific lists of "Ready Willing and Able" firms.

- Award – Monitor for violations of state, federal or local laws. Monitor sub-contractor payments (vendors, supplies and subcontractors). Monitor for any contract irregularities. Provide mediation services as necessary.
- "Close-out-Resolve"-Resolve any outstanding issues at the end of a project and monitor final payments, including retention.

Monitoring Prevailing Wage and Davis-Bacon Requirements

- Review certified payroll and use of proper wage rates.
- Conduct employee site interviews.
- A&E and Developers – Review and approve all action documents. Participate on A&E interview selection panels in excess of 100K. Provide workforce report analysis. Issue findings to Council (pre-award). Monitor for violations of Business & Professions Codes, payment activity reports, and any other irregularities.

Monitoring Non-Discrimination Ordinance and Federal Affirmative Action Requirements

- Review and analyze workforce reports prior to contract award.
- Require Equal Opportunity (EO) Plans if workforce report indicates significant discrepancies.
- Investigate complaints, conduct desk audits and onsite compliance reviews for active contracts.
- Monitor progress of EO Plans.

In addition to compliance, the City designed and implemented two emerging business development programs to assist with expanding the base of local small contractors. The Minor Construction Program was designed to match small and emerging construction contractors with projects \$250,000 and under. The Mentor-Protégé Program was developed to produce a broad base of high quality, competitive and profitable small and emerging construction businesses. An Executive Summary of the Program has been included as Attachment 2. Both programs have achieved some level of success with business development.

Reporting

Attachment 1 outlines the total contracting dollars and number of contracts awarded for fiscal year 2007 (7/01/06-6/15/07). As a newly consolidated Department, P&C is working on a comprehensive reporting system for all contracts (vendor, construction, consultant, etc.) and will keep as much detailed data as available, including company size, ownership information, location, etc. A report for fiscal year 2006 and fiscal year 2007 will be provided in October 2007. Staff was able to gather only one year of data for construction awards for this report.

Although the City currently provides a broad-based and structurally strong compliance program, our fiscal year 2007 award statistics indicate that much more needs to be done. The following is the proposed fiscal year 2008 plan to improve performance with ensuring equal opportunity in City contracts.

Proposed Action Plan

1. Enforce the "Submission of Final Summary Report "in SCOPE which requires the following:

"Contractor must submit a Final Summary Report including all subcontracting activity during the project to City of San Diego within fifteen (15) calendar days after Final Inspection of contract work. Failure to comply will result in penalties up to and including assessment of liquidated damages or withholding of retention".
2. Provide bi-annual reports to Council beginning January 2008. These reports will include contracting statistics, compliance monitoring updates, and fiscal year 2008 Action Plan progress. While the first report will be issued in January 2008, an Action Plan update will be provided in October of this year.
3. Monitor sub-contractor payments on non-prevailing wage contracts.
4. Utilize the services of a national expert with local experience to assist with the following tasks:
 - (a). **Race-/Gender-Neutral Policy Development** - Review and draft amendments to the City's Commercial Nondiscrimination Ordinance that requires the City not to engage in business with firms that discriminate in the solicitation, selection, or treatment of subcontractors, vendors, or suppliers; update the policy as necessary to maximize effectiveness; and propose modifications to the City's administration of this policy.
 - (b). **Capital Access Programs** - Develop and recommend programs and establish policies designed to enhance small, local, minority, and women-owned businesses' access to equity and debt capital, including, but not limited to:
 - (1). Linked deposit programs to leverage City banking deposits by encouraging its depository banks to establish aggressive commercial lending programs to provide working capital and financing to small, local, minority, and women-owned businesses;
 - (2). Revolving working capital fund for use by City small, local, minority, and women-owned businesses on City-funded construction jobs;
 - (3). Social policy and investment criteria for the City's selection of depository banks, investment managers, and other financial institutions.
 - (c). **A Small Local Business Enterprise Program** - Draft a new City policy for review that provides an array of race- and gender-neutral means for enhancing the contract participation by small and local business enterprises ("SLBE"), including, but not limited to, a provision for mandatory SLBE subcontracting goals that require the City's prime contractors to subcontract a certain portion of prime contracts to Small Local Business Enterprises ("SLBE") based upon availability of such subcontractors and such subcontract opportunities. This program would also authorize the City to award certain evaluation point credits to SLBE firms that are competing for professional services contracts. [Note: Prior to proceeding with task, it will be

necessary to determine whether or not State Law or City Charter provisions prohibit local preferences by political subdivisions.]

- (d). **Capacity Development Initiatives** - The Capacity Development Initiatives will seek to develop new capacity and encourage diversification of SBE / MBE / WBE / DBE contractors into construction specialties and trades in which they are under-represented in the industry (e.g., pipe construction). These initiatives may include the use of demonstration projects and a classroom curriculum developed, taught, and demonstrated in the field by established contractors with the participation of aspiring entrants. The curriculum for such initiatives would include technical knowledge and trade know-how, business management techniques, marketing, estimating, bidding, project management, etc.
- (e). **Centralized Bidder Registration System** - Establish administrative rules to implement a centralized bidder registration process for all bidders and vendors. This centralized bidder registration process would enable the use of targeted electronic outreach and solicitation of bids from firms that express an interest in selling relevant categories of goods and services to the City. (Such an administrative process would also greatly reduce staff hours and expense in complying with reporting requirements for accurate contract award and payment data by industry and by firm name and type. It will also enable the City to accurately measure the success and impact of its various procurement and contracting policies.)
- (f). **Review of Contracting and Procurement Procedures and Practices** - Applicable provisions of City contracting and procurement manual procedures will be reviewed for the purpose of identifying elements that may adversely affect the participation of small-, local-, minority-, and women-owned businesses in City contracts. Actual administrative practices will also be reviewed for the same purposes. Modifications to these procurement manual procedures and practices will be recommended for the enhancement of opportunities for such firms to effectively compete. Topics for review may include, but not be limited to:
- Dollar thresholds for bonding;
 - Dollar thresholds for small purchases;
 - Prompt payment provisions;
 - Use of blanket purchase orders;
 - Use of intergovernmental purchases;
 - Contract bundling and size of contracts;
 - Contract specification language;
 - Timeframes for bidding process;
 - Bid solicitation process;
 - Alternative construction processes (e.g., construction management and multi-prime contracts);
 - E-Commerce as a vehicle for enhancing small, local, minority, and women-owned businesses' access to City contracts;
 - Centralized Bidders Registration process for all contractors and vendors.

5. Enhance and expand both Minor Construction and Mentor Protégé Programs to include other types of commodities and services currently purchased on City contracts.
6. Ensure Redevelopment Agency projects are included in programmatic changes.
7.
 - o Empower CEOC to recommend to Council program/policy directions that are adopted to accommodate changing market conditions and maximize total contract opportunities
 - o Establish, & identify revenue sources coming into the City that can support, a small Business Center
 - o Unify existing small business programs
 - o Provide contracting outreach
 - o Include consultants, vendors and construction contractors in all efforts
8. Ensure the Enterprise Resource Planning (ERP) implementation includes DBE reporting of bid awards for all contracts.

Responses to non-agenda public comments and subsequent questions from Council President Pro Tem Anthony Young:

Below is a synopsis of the questions, and answers, not covered in the bulk of this report.

1. Confusion of data collection and legal analysis sought re: Prop 209

The City has consistently maintained hard copy data on participation levels in contracting. Regarding public inquires on the legality of collecting data post prop 209, analysis of this issue was sought from the City Attorney who opined is legal to collect the data, however, it cannot be considered in the award of contracts.

2. Directive to former Program Manager to replace SCOPE.

The current administration maintained the existing elements of SCOPE and intends to implement the final summary report requirement this fiscal year.

3. Transparency issues in meetings with City Staff.

Historically, City staff has participated in meetings of public groups upon request. Staff will review this practice and current policies to determine the benefits/liabilities associated with the current practice and make recommendations for change if necessary. In addition, any meeting initiated by City staff will continue to be open and inclusive.

4. City compliance with Non-Discrimination Ordinance and Federal Affirmative Action Requirements.

The City ensures compliance with the Non-Discrimination Ordinance by reviewing and analyzing workforce reports prior to contract award, investigating complaints, and conducting

desk audits and onsite compliance reviews for existing contracts. All federally funded contracts are monitored for compliance with Federal Affirmative Action laws.

5. Benefit of Past Initiatives.

The small business programs initiated to date (Minor Construction and Mentor Protégé) have had documented successes. Other initiatives such as bonding and insurance requirements, job order contracts, breaking out large contracts into smaller pieces, need to be reviewed and analyzed. Staff intends to conduct this review and include it in the January 2008 report.

6. Lack of Statistical Reporting for past two years.

No excuse. A report for fiscal years 2006 and 2007 will be provided in October 2007.

7. Decentralization of EO functions and retention of experienced staff.

There has been a decentralization of responsibilities for EO functions between P & C and Engineering & Capital Projects. The current administration has begun the process of centralizing those compliance responsibilities into P & C to assist in maximizing the effectiveness of project monitoring. Recently, P & C was able to rehire a 15 year EOC veteran who joins the current Program Manager for combined experience EOC compliance in excess of 30 years.

8. Impact of BPR on EOC

The BPR has afforded Purchasing & Contracting greater ease in accessing data to evaluate all contracting methods and to provide a unified base to ensure that all who want to do business with the City have an equal opportunity to participate and to ensure non-discrimination in the solicitation of contracts and in the selection of all methods of contracting. We anticipate the need for additional staff to monitor the non-prevailing wage projects once responsibilities for all compliance functions are centralized in P & C.

FISCAL CONSIDERATIONS:

Consultant contract

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

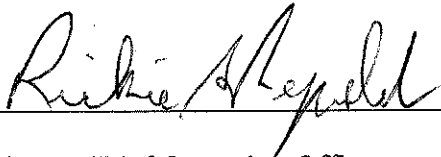
Non-Agenda Public Comment to City Council – May 15, 2007

Memorandum from Council President Pro Tem Anthony Young to Mayor Jerry Sanders dated May 21, 2007.

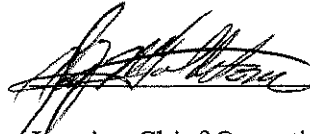
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

CEOC Meetings
Apprenticeship Subcommittee
Industry Outreach Meetings

KEY STAKEHOLDERS AND PROJECTED IMPACTS:



Assistant Chief Operating Officer



Interim Chief Operating Officer

Attachment 1: Fiscal Year 2007 Statistics

Attachment 2: Mentor Protege Program Executive Summary - 2006