



THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: February 20, 2008 REPORT NO: 08-020

ATTENTION: Honorable Council President and City Council  
Agenda of February 25, 2008

SUBJECT: Equal Opportunity Contracting Program

REFERENCE: 1. Actions from December 6, 2007 Committee on Rules, Open  
Government and Intergovernmental Relations  
2. Memo from Council President Scott Peters to Mayor Jerry Sanders  
dated December 12, 2006

REQUESTED ACTION:

None. Advisory response.

STAFF RECOMMENDATION:

None. Information Only.

SUMMARY:

On December 6, 2007, the Purchasing & Contracting Department Director provided an update to the Committee on Rules, Open Government and Intergovernmental Relations on reforms to the City's Equal Opportunity Contracting Program (EOCP). Several issues were raised and staff was requested to return with a programmatic update and responses to the issues raised and outlined in Reference (2) above.

This report responds to the memo and provides: an update regarding the Equal Opportunity Contracting Program, Bidder's Registration Program, and suggested changes to improve the effectiveness of the Subcontractor Outreach Program (SCOP). Staff will provide bimonthly programmatic progress reports to the Public Safety and Neighborhood Services Committee, and semi-annual statistical/compliance related reports to City Council.

Subcontractor Outreach Program (SCOP)

SCOP (pronounced "scope") was adopted by City Council in 2001 in response to Proposition 209 which limited the options California public agencies could utilize to ensure minority, woman-owned and disadvantaged businesses were provided opportunities to compete for contracts funded with state and/or local funds. The Program is a modified version of a similar program being implemented in the City of Los Angeles.

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- Mandatory subcontractor participation goals - requires bidders to subcontract a minimum percentage of its bid to qualified available subcontractors. Failure to meet this subcontractor participation goal will cause a bid to be rejected as nonresponsive.
- Advisory Disadvantaged Business Enterprise(DBE), Disabled Veteran Business Enterprise (DVBE) and Other Business Enterprise goals – are advisory goals only and do not constitute a basis for determination of noncompliance or disqualification.
- Documentation of outreach efforts must be submitted within five (5) working days from bid opening - bidder must provide a broad-based outreach in solicitation of subcontractors, as demonstrated and reviewed to achieve 80 (out of 100) Outreach Effort Indicator Points, (Attachment A) as evaluated by the EOCP.
- Submission of Final Summary Report – contractors must submit a Final Summary Report including all subcontracting activity during the project with fifteen (15) calendar days after final inspection of contract work. Failure to comply may result in assessment of liquidated damages or withholding of retention.

Language in the City’s bid documents allow for SCOP requirements to be waived.

Subcontracting Outreach Program section, I. General, second paragraph states “Terms and conditions of this Subcontracting Outreach Program apply to city-funded construction projects of \$250,000 or more. At the City’s sole discretion, these requirements may be waived in advance on projects deemed inappropriate for subcontracting participation.” A recent review of the current program identified two specific areas of concern:

- 1) The Final Summary Report requirement was not being enforced. With the assistance of Field Engineering staff, this has been corrected. A specific report format has been created (Attachment B), and reports on active projects are being collected and reviewed for compliance.
  
- 2) The SCOP Waiver process was the second area of concern which was also raised during the Rules Committee meeting on December 7th. Unaudited findings for FY08, indicate that ten (10) SCOP eligible contracts were awarded with one (1) contract waived as a sole source award. . Unaudited findings for FY07 indicate that twenty-one (21) SCOP eligible contracts were awarded with nine (9) contracts waived – five (5) as sole source awards, two (2) as emergency procurements/time sensitive awards, one (1) as a general requirements contract and one is undetermined. Written procedures and/or documentation for granting these waivers could not be located. Therefore “Procedures for Granting SCOP Waivers” (Attachment C) has been developed based on models from other municipalities. Written requests with justification must be submitted to the EOCP Program Manager for review and approval. These procedures are effective immediately. A summary of requests will be provided in the routine statistical reports. Records will be kept in individual project files and reported to City Council as projects are brought forward for approval.

Consultant Franklin Lee, Tydings & Rosenberg LLP conducted an independent analysis of the City’s SCOP program. A summary memo is included as Attachment D. The specific recommendations have been forwarded to the City Attorney for review and comment. Once completed both the recommendations and City Attorney comment will be presented to the Citizens Equal Opportunity Commission (CEOC) and other key stakeholders for review and feedback. After meeting with various community members and groups, staff will determine the

appropriate course of action, present the results to the Committee on Public Safety and Neighborhood Services by April 2008 and request approvals as necessary. Public input will be included in the presentation.

### **Equal Opportunity Contracting Program Staffing**

On January 14, 2008, EOCP was transferred from Purchasing & Contracting to the Administration Department who reports directly to the Chief Operating Officer. This change in reporting provides the increase attention and focus required to address the immediate and long term issues and challenges facing the EOCP team. In addition, significant resources have been added to the team. A full time Program Manager has been hired, an additional position has been transferred from Purchasing & Contracting and two positions have been transferred from Engineering & Capital Projects. In addition, Economic Development has agreed to fund an administrative support position. Three college interns have also been hired to assist with data collection – Public Works has agreed to fund these positions. With the additional resources (from 6FTEs to 11FTE's, plus 3 interns), staff can perform the functions of compliance, business development, outreach and administrative document review more effectively.

A comprehensive review of work activities, workloads and gaps in services is currently underway. Upon completion, staff will be organized in a manner that will maximize their ability to effectively implement all the elements of the City's Program, increasing enforcement efforts where necessary and develop a strategy for enhancing the business development aspects of the program

Weekly coordination meetings are being held with EOCP, Engineering and Capital Projects, Purchasing & Contracting, Water, General Services, Metropolitan Wastewater and City Attorney to more efficiently coordinate the contract award process, brainstorm ideas to enhance coordination efforts and address other challenges/obstacles impeding the proactive implementation of the Program

### **Bidders Registration Program**

The City's procurement system for tracking available companies for City contracts and outreach efforts are housed in multiple systems and departments. To streamline and simplify data collection and outreach efforts, a Bidder's Registration Program has been established by the Purchasing & Contracting Department. In essence, any company (vendor, consultant, or construction) can register into the City's Bidder Registration Program to be available for any upcoming bid or contracting opportunities. This allows all businesses to have equal access and the City to perform outreach to firms who supply needed trades, services or commodities.

Beginning January 1, 2008, the Contractor / Vendor Registration Form (Attachment E) was included in all City bid documents. The marketing campaign has begun using current City resources such as Channel 24, Community Service Centers, and Treasurer's office (new business licenses) as well as expanded presentations to community and industry groups to help spread the word to businesses. In spring 2008, the fully automated on-line version will be available, providing a database of available firms, with tremendous outreach and reporting features. Businesses can enter the system at any time, but must be registered in the system as part of any active procurement process. This system will provide the necessary infrastructure to

enable the City to accurately measure such availability, utilization, and disparity in a very timely and cost-effective manner.

### **Contract Compliance**

One of the EOCP's key responsibilities is to ensure contractor compliance with all equal opportunity and nondiscrimination requirements . Specific goals and other requirements related to subcontractor participation are determined by the funding source (i.e. federal, state, or local). Questions were raised regarding the level of compliance activity being conducted. Federally funded projects have been monitored for compliance in accordance with Attachment F. Added staffing will allow additional field visits and audits to be conducted to further ensure compliance with federal regulations .

Monitoring efforts on municipal, City-funded projects has been complaint driven. Routine compliance monitoring throughout the life of all projects will be implemented as additional staff members are hired and trained. Consultant Franklin Lee will be training staff on investigating complaints and compliance monitoring as it relates to the City's Nondiscrimination Ordinance.

### **Increased Outreach and Business Re-Engineering of City Processes**

The City recognizes that many smaller or new businesses may be intimidated by the City procurement and bid processes. To address some of the structural issues that may be causing a hindrance, Purchasing & Contracting Department and the Equal Opportunity Contracting Program have taken a proactive role in reviewing all the procurement processes, documents, and advertising and outreach efforts. These efforts include:

- Simplification of the bid documents. From the cover page, to the language within, the City's bid and RFP packages are being updated to be simpler to read, more concise, and easier to respond to. All legal requirements will be maintained, however the document will be less onerous and cumbersome.
- Tiered Insurance and Bonding Requirements. Risk Management, P&C and City Attorney's office realize that one size does not fit all in insurance and bonding requirements and are working on a tiered system to be more responsive to smaller companies, or low-risk contracts.
- Mentor Protégé Program is being expanded. Additional protégés in construction are being brought on as well as the development of programs for consultants and vendors in partnership with the Small Business Advisory Board. The City's Economic Development Division has committed to providing funds for the expansion. In addition, a business development strategy is being developed with the assistance of Franklin Lee, the City's consultant.
- Expansion of the City's "How to Do Business with the City" workshops. This expansion will provide more information about city contracting opportunities, how to be successful in the process, and the City's Equal Opportunity Contracting requirements.
- Standardization of all bid document language regarding equal opportunity requirements. The funding source of a project determines the requirements. Contract specifications and Executive Summary language is being reviewed for standardization to ensure accuracy and consistency in EOCP language.

FISCAL CONSIDERATIONS:

Consultant contract with Tydings & Rosenberg LLP for \$66,000 plus travel of \$7,500.

Bidders Registration Program design and implementation by San Diego Data Processing Corporation for \$69,500.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

On August 1 and October 10, 2007, the Rules, Open Government and Intergovernmental Relations Committee of the City Council received an informational report on the current status of EOCP in the City of San Diego. On October 15, 2007, the Audit Committee received an informational report.

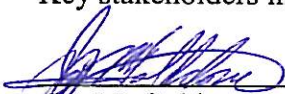
COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

Over the past six months, many outreach and coordination efforts have occurred to increase the exposure and emphasis of the Equal Opportunity Program within the business community and across City contracting. These include:

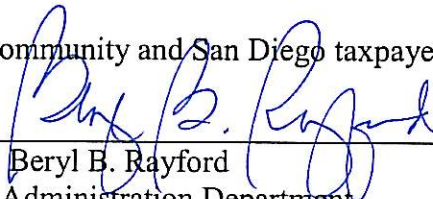
- The Citizens Equal Opportunity Commission (CEOC), an advisory committee, appointed by the Mayor and confirmed by the City Council, has taken a more active role in assisting the Mayor with improving the City’s performance with ensuring equal opportunity in City contracts. Four new members have been appointed, and one At-Large member position should be filled by March 2008.
- Two Equal Opportunity Summits, sponsored by the Mayor and hosted by the CEOC, have been held . Attendees from diverse professional and ethnic backgrounds continue to provide feedback and suggestions on the City’s equal opportunity contracting program. These meetings will continue to be held on a quarterly basis.

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Key stakeholders include members of the business community and San Diego taxpayers.



Jay M. Goldstone  
Chief Operating Officer



Beryl B. Rayford  
Administration Department

Attachments:

- Attachment A: SCOP Outreach Effort Indicator Points
- Attachment B: SCOP Final Summary Report
- Attachment C: SCOP Waiver Process
- Attachment D: Memo from Franklin Lee, SCOP Improvements
- Attachment E: Contractor / Vendor Registration Form
- Attachment F: Compliance Monitoring Responsibilities