



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED March 28, 2008 REPORT NO. 08-048

ATTENTION: Public Safety and Neighborhood Services Committee
Agenda of April 2, 2008

SUBJECT: Informational Report on Equal Opportunity Contracting
Program

REFERENCES: Equal Opportunity Contracting Report No. 08-020
Actions for February 25, 2008 City Council Meeting

SUMMARY:

THIS IS FOR INFORMATION ONLY.

BACKGROUND

At the February 25, 2008 City Council meeting, the above referenced report was presented as an update on the City's Equal Opportunity Contracting Program. The report covered updates on SCOPE, SCOPE waiver process, SCOPE Final Summary reports, program staffing, Bidders Registration Program, contract compliance and increased outreach and business re-engineering of city processes. Staff was asked to report to the PS&NS in April to continue to provide updates.

DISCUSSION

This report details actions taken to date.

ADMINISTRATIVE INITIATIVES

Strategic Plan

A draft short-term strategic plan has been developed. As reflected in Attachment A, the plan includes potential modifications to the SCOPE program, capacity building efforts, policy initiatives, and administrative goals. Stakeholder input is also being sought from business groups, community leaders and the Citizen's Equal Opportunity Commission (CEOC).

Reflective of the concern that there may not be a sizable business/employee population interested in City contracts, one of the major thrusts of the City's EOC program is capacity building and business development. Strengthening of the City's SCOPE, Mentor-

Protégé and other programs for smaller business participation concurrent with workforce development efforts should address some of the issues identified as weaknesses in the City's EOC Program.

Performance Measures

Performance measures have been developed with the assistance of the City's Business Office and will be included in the FY2009 Proposed Budget. Our strategic objectives are to ensure that all who do business with the City comply with federal, state, and local labor laws. Secondly to foster collaborative relationships with the public, contractor and subcontractor organizations, and City staff involved in EOC activities.

Measures focus on compliance, discrimination investigations, providing EOC training to staff, and accurate and timely reporting. Initiatives include development of a site visit plan, expansion of the mentor protégé program, and development of programs within the limits of the law to ensure contractors reflect San Diego's diverse population.

Standardized Language

Standardized language has been developed for use in the 1472 process for SCOPE, consultant and developer agreements. Contract language is also being reviewed and developed for contracts with federal dollars and thus far we have finalized CDBG, HUD and FEMA language. A memo outlining all changes will be distributed to Department Directors by April 7th.

BUSINESS DEVELOPMENT

EOC staff and Consultant Lee are exploring existing capacity building initiatives. We have determined that it is important to establish a referral network for technical assistance with local agencies that provide help with bidding, marketing, estimating, billing, payroll, OSHA requirements and other small business needs. Meetings have been conducted with ACCION, SCORE and other agencies to assess existing local small business resources.

Also, with the assistance of the Community Economic Development Department, preliminary dialogue has begun with the San Diego Contracting Opportunities Center (SDCOC) to augment the City's EOC efforts by providing specialized and professional technical assistance to individuals and businesses who wish to successfully contract with federal, state and local governments. Their services could possibly include outreach and financial counseling. Participants would be expected to make a concerted effort to work with certified small businesses.

According to the 2007 SDCOC Annual Report, 68% of their clients successfully bid on and received \$60 million in construction contracts. Of that amount, \$46 million dollars were received by subcontractors.

Mentor-Protégé Program

Construction: The Mentor-Protégé program is currently accepting applications from emerging, local small construction companies interesting in participating in the program and anticipates an additional three (3) new protégé companies participating in the program by May 1, 2008. Our goal is to increase the number of mentor-protégé partnerships from four (4) to fifteen (15) by the end of 2008.

On Wednesday, March 19, 2008, The Mentor Protégé Program participated in the San Diego County Water Authority's Small Contractor Outreach & Opportunities Program (SCOOP) Focus Group, to discuss the Program. Presentations were given by the City of San Diego, AGC, and previous Mentor-Protégé participants on support services, coaching, and training opportunities made available to protégés. In addition, the application process was explained and attendees were encouraged to participate.

On January 29, 2008, David Ortiz, President, In-Line Fence and Railing Company graduated from the Mentor Protégé Program. In-Line Fence and Railing Company is the third (3rd) protégé to graduate from the Mentor Protégé Program. The newest protégé to join the program is Rosalie Silva, of Silva General Construction, Inc. (SGC).

Consultants/Vendors: In our efforts to expand the Mentor Protégé Program to include vendors and consultants, we are working with the San Diego Regional Chamber of Commerce and the City's Small Business Advisory Board. The existing construction program elements have been shared with both groups, and follow-up meetings are being scheduled. With their assistance, we can design and develop a formal Program to expand opportunities for small and emerging vendors and consultants in San Diego.

Small Local Business Enterprise Program

Small businesses are a significant sector of the local economy and form the backbone of our neighborhoods. Through payroll taxes alone, local small businesses make a significant investment in the economic health of the City of San Diego and the quality of life of its citizens and visitors. It is critical that the City award and administers its public contracts in a manner that is fair and provides equal opportunity to all local businesses regardless of race, gender or other category protected by the law. In part, the City can accomplish this goal by ensuring that small and disadvantaged businesses can compete for public contracts on a level playing field. A draft for a small local business enterprise program is being designed to achieve this goal. The draft program includes bonding and insurance waivers, price preferences, mandatory subcontracting, a sheltered market aspect and a business development demonstration project. It has been framed as a two-year pilot program and is currently being reviewed by the City Attorney's Office and EOC staff. We will ask the Citizens Equal Opportunity Commission to host meetings to obtain input from stakeholders and provide a report based on this input. The report will be used to assist with the final draft of the program.

EXISTING PROGRAM CHANGES

SCOPE

- The SCOPE program analysis prepared by Franklin Lee has been submitted to various stakeholders and their suggestions recorded. Further input will be gathered at the CEOC meeting scheduled for the evening of April 2nd. A staff recommendation will be provided to PS&NS at the July 2008 meeting.
- SCOPE Waivers - The SCOPE waiver process has been formalized and Attachment B is the approved form to be used when requesting a waiver from SCOPE program requirements. This form was designed based on samples from other municipalities. No SCOPE waivers have been requested within the last 60 days.

OUTREACH EFFORTS

EOC presentations have been made to the Citizens Equal Opportunity Commission (March 5), Asian Business Association (March 11th) and Diamond Business Improvement District (March 19th).

In addition, staff participated in the Small Business Advisory Council established by the Urban League (March 21) to create solutions to the lack of small business opportunities in the San Diego area. This group is comprised of SCORE, the Urban League, Regional Airport Authority, Union Bank and community development corporations.

Consultant Franklin Lee and the EOC Program Manager met with Union Bank executives to discuss the possibility of creating a Small Business Enterprise Loan Fund or other financial tools to enhance competitive positioning for smaller businesses (March 21).

INTERDEPARTMENTAL RELATIONSHIPS

Weekly interdepartmental meetings are held to address issues regarding proactive process and policy changes, training needs, opportunities to develop partnerships and to develop greater understanding of individual department goals. EOC, Engineering, Water, MWWD, Purchasing & Contracting, General Services, and the Mayor's policy staff are regular participants. Following are accomplishments and ongoing efforts:

Increased authority of EOC management team to identify, develop and implement internal process improvements that ensure the appropriate emphasis is placed on program requirements.

- Development of standardized EOC language on internal approval documents;
- Development of accurate and standardized contract language;
- Development of SCOPE waiver form and approval process;

- Designing a report to advise City Council of results of contract awards approved to advertise and award – reports to begin May 2008;
- Updating SCOPE subcontracting goal calculations;
- Incorporating defined design/build contract goals based on funding source(s);
- Developing subcontracting language for general requirement contracts;
- EOC receives monthly CIP status report which includes projects coming up for bid; and
- Presentation of training covering the basics of the EOC program to Engineering Project Managers during the week of April 14th.

BIDDERS REGISTRATION PROGRAM UPDATE

EOC and Purchasing & Contracting have met with SDDPC several times within the last month to ensure user requirements and reporting features will be implemented. Hard copies of the application form are still being distributed in bid packages until the official program roll-out in spring 2008. It is highly anticipated that between the bidder registration system and ERP, the City will be able to obtain availability statistics and greater outreach of bid opportunities for those interested in doing city contracting.

FY07& FY08 CONSTRUCTION SUBCONTRACTING STATISTICS

Manual efforts are hampered due to the challenges associated with retrieval from numerous source documents and obtaining reliable subcontracting payment data. In July 2008 this will be addressed through the reporting functions of the Bidders Registration System and the City's conversion to a new software system. Staff will continue to gather data manually as we are in discussions with San Diego Data Processing Corporation to determine a viable interim solution.

The past trend of very low participation of MBEs/WBEs/DBEs/DVBEs has raised serious concern and emphasizes the need for increased compliance and outreach efforts, as well as, aggressive business development programs. Staff continues to work on these types of strategies. Council Policy 300-10, the City's policy on equal opportunity within its workforce and contracting efforts will be reviewed for updating purposes.

DISPARITY STUDY

Staff continues to recommend waiting for the outcome of the Coral Construction case prior to investing the necessary funds to complete an updated or new disparity study. At this point, the city does not have reliable data which is absolutely necessary for a valid disparity study. In the meantime, statistical information will continue to be manually

collected, as well as ready, willing and able business information via the Bidders Registration Program. A disparity study would only be feasible if the California Supreme Court rules that evidence from such a study might warrant consideration of more effective race or gender conscious remedies.

FOLLOW-UP

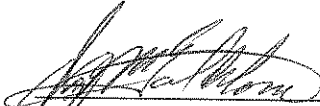
Staff will report to the Committee in July 2008. The report will include statistics from the Independent Corporations.



Beryl Rayford
Equal Opportunity Contracting Program Manager



Debra Fischle-Faulk
Director, Administration



Jay M. Goldstone
Chief Operating Officer



CITY OF SAN DIEGO
EQUAL OPPORTUNITY CONTRACTING PROGRAM
Debra Fischle-Faulk, Director
Beryl Bailey Rayford, Program Manager

SHORT TERM STRATEGIC PLAN

SCOP Program –

- Include categories & definition for MBE & WBE.
- SCOP waiver procedures.
- Submission of good faith effort documentation by all bidders.
- Assess penalties for false or fraudulent reporting of subcontractor utilization.
- Modify “advertising solicitation” criteria under good faith efforts scoring.
- Reduce threshold in SCOP from \$250k to \$200k.
- Require periodic audits by IBA or Auditor’s office.
- Provide series of specific outreach efforts.

Capacity Building Initiatives

- Mentor-Protégé Program
- Demonstration Project
- Technical Assistance
- Capital Access (Banker meeting – March 21)

Policy Initiatives

- SCOP modifications
- Minor Construction Program
- Small Local Business Enterprise Program (March 15)

Administrative Goals

- Staffing – Fill 3 FTEs as Associate Management Analysts. Hire three interns to reorganize filing system and assist with report production. Training to be provided by Franklin Lee on non-discrimination investigations. Contract compliance, payroll monitoring, worksite compliance are additional areas where training is needed.
- Audit of contract files.
- Update of contract compliance officer handbook.
- Workflow analysis.



CITY OF SAN DIEGO

SCOPE WAIVER REQUEST FORM

SECTION 1. General Information	
Project Name: _____	
Anticipated Advertisement Date: _____	
DCOO Signature: _____	
Contact Person: _____	
Phone Number: _____	Fax Number: _____

SECTION 2. Contractor Information (If applicable, ie: Sole source, emergency)	
Contractor Name: _____	
Contact Person: _____	
Contact Phone No.: _____	
Contractor Address: _____	
Vendor Number (if known): _____	

SECTION 3. Transaction Information	
Date Waiver Request Submitted: _____	
Type of Contract: _____	Dollar amount: \$ _____
Contract Start Date: _____	End Date: _____

SECTION 4. Waiver Type (letter of Justification <i>must</i> be attached, see Check List on back of page.)	
<input type="checkbox"/> A. Sole Source	
<input type="checkbox"/> B. Emergency (pursuant to Charter Section)	
<input type="checkbox"/> C. Public Entity	
<input type="checkbox"/> D. No Potential Subcontracting Opportunities – Copy of waiver request sent to COO on: _____	
<input type="checkbox"/> E. Government Bulk Purchasing Arrangement – Copy of waiver request sent to COO on: _____	
<input type="checkbox"/> F. Other (please explain in justification memo)	

EOC ACTION	
Waiver Granted: _____	Waiver Denied: _____
Reason for Action: _____	
EOC Program Manager: _____	Date: _____
Director: _____	Date: _____

CHECK LIST

You must complete each of the steps below before submitting this form:

- Include a letter of justification explaining:
 - The purpose of the contract.
 - Your department's efforts to identify subcontracting opportunities.
 - Why the contract fits the type of waiver being requested (for example, why it is a sole source).
- Answer all questions in Sections 1-3.
- Indicate (in Section 4) which waiver type is being requested.
- For waiver types D and E, submit a copy of this form to the Chief Operating Officer (COO) and indicate where requested on the form, the date this was done.

ADDITIONAL INFORMATION

Waiver Types D and E: These waiver types have additional requirements:

1. The contracting city department must notify the COO that it has requested a waiver of this type.
2. Departments exercising waiver authority under one of these provisions must appear before the Executive Review Team and report on their use of such waiver authority.

All modifications to waived contracts that increase the dollar amount of the contract must have prior EOC approval.

√ **Additional copies** of this form may be downloaded from the City's Intranet under forms.

➔ **Send completed waiver requests to: Ms. Beryl Rayford, EOC Program Manager, MS 56**

☎ **For further assistance, contact EOCP at X67161**