



THE CITY OF SAN DIEGO

REPORT TO THE CITY COUNCIL

DATE ISSUED October 15, 2008 REPORT NO. 08-156
ATTENTION: Public Safety and Neighborhood Services Committee
 Agenda of October 22, 2008
SUBJECT: Equal Opportunity Contracting Program Update

REQUESTED ACTION:

Accept staff's recommendation for implementing City Council approval of SCOPE Waivers.

STAFF RECOMMENDATION:

Accept staff's recommendation.

SUMMARY:

On Monday, September 22, 2008, EOC staff presented to City Council the final SCOPE recommendations and bi-annual statistics. Council approved the recommendations and made a motion to return the waiver provisions to the PS&NS Committee for further consideration. As an interim measure, Council moved that all SCOPE waivers, except on emergency contracts, would require Council approval. The City Attorney's office has updated program language to reflect this change.

This report provides staff recommendations for implementing City Council approval of SCOPE Waivers and provides an update of actions taken to date.

Program Accomplishments

In 2007 an EOC Action Plan was developed to directly address ongoing and transition-related issues. The current accomplishments are listed below. Attachment A provides all actions and their current status.

- City Council approval of final SCOPE recommendations.
- Update of Council Policy #300-10.
- Provision of first bi-annual statistical report since 2003.
- EOC Program staff expanded from 6 to 9 positions.

Program Activities

- EOC Program is now responsible for the application process of the Minor Construction Program. There are a total of 59 approved Minor Construction program participants. We have yet to receive responses to 122 requests for updated income statements from pending contractors. The program as a whole is currently under review to determine how to improve its effectiveness. Meetings are scheduled with EOC and Public Works to identify potential Minor Construction projects.
- Capacity development planning has begun with regional agencies (Council for Supplier Diversity, San Diego Contracting Opportunities Center and Metropolitan Water District of Southern California).
- A San Diego Construction Expo is scheduled for February 5, 2009 at Balboa Park Club.
- Off the shelf software packages are being reviewed for contract compliance, subcontractor payment tracking and automated bid notification.
- A quarterly e-newsletter is being developed to ensure effective communication with stakeholders. The publication will focus on program accomplishments, success stories and industry news.

Next Steps

- Conduct a comprehensive review of the local Small Business Enterprise Program developed by EOC Consultant Franklin Lee to effectively increase participation of small emerging firms in regional economy. Obtain input from stakeholders for consideration and inclusion in the final proposal.
- Design and develop a demonstration project with Water, Metropolitan Wastewater, Engineering & Capital Projects to provide contracting and employment opportunities for small businesses and the local community..
- Develop a strategic plan that provides a roadmap to effectively achieve equitable spending of City's contracting dollars.

Council Approval of SCOPE Waivers

On Monday, September 22, 2008, EOC staff presented to City Council the final SCOPE recommendations and bi-annual statistics. Council further requested staff to provide this committee with a process for City Council to be the final approver of SCOPE waivers. Staff recommends the initial step of requesting waivers remains the same. The requesting department submits the request form with a written justification to EOC for a recommendation of approval or denial. Rather than this being the final determination, for non-emergency waivers, the requesting department will forward their request and EOC's recommendation to City Council for final approval. Should a waiver be approved, SCOPE requirements would not be included in the bid specifications. Should a waiver be denied, SCOPE requirements will be included in the bid specifications. Attachment B is the SCOPE Waiver Form and instructions.

As previously reported, no non-emergency SCOPE waiver requests have been submitted to EOC as of February 2008. The City Attorney's office has updated program language to reflect this change.

Additional Projects - Contracts

Outreach Contract – CIP Projects

As requested by Councilman Tony Young, EOC, Public Works and Purchasing staff met to discuss the design and development of a Request for Proposal for equal opportunity outreach services for capital improvement projects. Public Works has agreed to fund the contract which will be competitively bid and awarded on rotational basis. The scope of work is currently being developed with an anticipated award date of February 2009.

Compliance & Tracking Software

Potential off-the-self software packages are being evaluated by EOC to determine suitability for tracking subcontractor payments, payroll submittals, automatic bid notification and other needs to assist in ongoing statistical reporting. A competitive RFP will be issued once a final scope of work has been developed and submitted to Purchasing and Contracting. EOC staff is in the process of developing the scope of work. The anticipated implementation date is January 2009.

Capacity Development Efforts

In combination with the proposed Small Business Local Enterprise Program, relationships are being formalized via MOU's with local agencies to provide additional certification resources, technical assistance and increased mentoring opportunities.

- Certification - Council for Supplier Diversity. The Council currently provides an educational seminar series and MBE certification for small businesses.
- Technical Assistance – San Diego Contracting Opportunities Center offers extensive technical assistance for small businesses interested in government contracting.
- Mentoring – CalTrans and the City's Mentor-Protégé Program offers long-term partnering between larger companies and subcontractors.
- With assistance of consultant Franklin Lee, design and develop a demonstration project with Water, Metropolitan Wastewater, Engineering & Capital Projects to provide contracting and employment opportunities for small businesses and the local community..

Construction & Consulting Initiatives Launch (Expo)

On Thursday, February 5th 2009, the EOC Program plans to host a business outreach event with other leading public agencies and local construction companies. Booths will

be available for prime contractors, subcontractors, architectural and engineering firms, consultants and technical assistance agencies.

The objective of the event is to provide a forum where small and emerging businesses can identify business and networking opportunities with major contractors, governmental and public agencies. We anticipate over 300 participants from city departments, local business owners and public agencies.

Citizens Equal Opportunity Commission (CEOC)

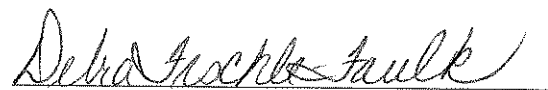
The CEOC has consistently met and addressed issues facing the City in achieving parity in the distribution of contracting dollars. Recent meetings have focused on specific topics i.e. the City's Prequalification Program in an effort to keep the commission better informed and allow for discussion of programs impacting equal opportunity in contracting..


In addition, a new Commissioner was appointed in October 2008, Maurice Wilson, Sr. Vice President of the Urban League. Mr. Wilson brings a wealth of knowledge in small business outreach and job development programs.

Statistical Reports

Statistical data, for the most current report submitted, has been updated to reflect verified certification information for the commodity and consultant statistics provided by Purchasing & Contracting, as well as, statistics for a complete fiscal year for construction contracts. The verification effort has resulted in a significant reduction in MBE/WBE/DBE/DVBE participation in commodity contracts. Attachment C provides detail of those statistics. Future reports will also include subconsultant data.


Beryl Bailey Rayford
EOC Program Manager


Debra Fischle-Faulk
Director of Administration


Jay Goldstone
Chief Operating Officer

Equal Opportunity Contracting Program Action Plan

	Action	Previously Reported Status – Rules Committee 10/10/07*	Current Status/Comments
1	Return to Rules Committee on 10/10/07 with an updated Action Plan.	Complete – 10/05/07	Complete – Rules Committee Report dated 10/05/07
2	Enforce the “Submission of Final Summary Report” in SCOPE	In Progress – 10/05/07	Complete – 02/08/08
3	Provide bi-annual reports to Council beginning January 2008. These reports will include contracting statistics, compliance monitoring updates, and FY08 Action Plan progress.	Bi-annual report will be brought forward in January 2008	Complete – Program update provided at 2/25/08 City Council meeting - latest stats and final SCOPE recommendations to be presented to City Council 9/22/08 - next overall program update scheduled 10/22/08 at PS&NS
4	Monitor sub-contractor payments on non-prevailing wage contracts	Two positions have been transferred from E&CP. These positions will be filled in November 2007 & monitoring will begin on contracts.	In Process – Positions were not transferred budgetarily and therefore could not be filled. Budgetary/Personnel administrative processes completed to allow for hiring. Anticipate staff to be hired in September. Status reports provided in February and July.
5	Utilize the services of a national expert with local experience to assist with: Race/gender neutral policy development, capital access programs, a small local business enterprise program, capacity development initiatives, centralized bidder registration system, and review of contracting and procurement procedures	Contract will be executed with Franklin M. Lee from Tydings & Rosenberg	Partially Complete - Contract awarded Ongoing - Strengthening SCOPE – priority 1, Future Action - Race/gender neutral policy development In Process - Capital Access Program development - exploring potential partnership with San Diego County Regional Airport Authority - Initial meeting was held with Airport Authority staff 6/05/08,

* Numbers in blue were added after 10/10/07 Rules Committee meeting – initial status reported in later Committee/Council reports

Equal Opportunity Contracting Program Action Plan

	and practices.		<p>follow-up meeting held 7/08/08, additional meeting scheduled for 10/06/08 – continuing to work with F. Lee</p> <p><i>In Process</i> - Small Local Business Program – <i>draft complete, review and additional steps future action</i></p> <p><i>In Process</i> – Bidder Registration System</p> <p><i>Future Action</i> - review of contracting and procurement procedures and practices</p>
6	Enhance and expand both Minor Construction and Mentor Protégé Programs to include other types of commodities and services currently purchased on City contracts.	Review and analysis has begun on these programs. Recommendations for enhancements being developed and will be brought forward with the next progress report.	<p><i>Ongoing</i> –</p> <p><u>Minor Construction</u> – 9 contractors approved, 2 denied; awaiting potential projects from E&CP. Program dollar threshold now overlaps with SCOPE; consequently program criteria will be developed.</p> <p><u>Mentor Protégé</u> – 2 new construction firms added; status provided in February, April and July to PS&NS; Began working with San Diego Regional Chamber of Commerce and City’s Small Business Advisory Board – progress is slow, therefore, additional efforts being made by researching Caltrans mentor protégé program with the intent of a possible partnership.</p>
7	Ensure Redevelopment Agency projects are included in programmatic changes.	Monthly mtgs. Will be instituted beginning 10/07 to coordinate efforts and programs.	<p><i>Ongoing</i> - Meetings on hold as result of limited resources (retirement of staff who conducted mtgs.). Meetings to resume 10/08/08.</p>

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8	Empower CEOC to recommend to Council programs/policy directions for adoption by City Council to accommodate changing market conditions and maximize total contract opportunities.	CEOC has reviewed its mission & goals and will work closely with staff to move forward policy recommendations to City Council. Vacant positions will soon be filled for a full 11-member panel.	Ongoing – CEOC voted on SCOPE recommendations - met with Chair 8/25/08 to discuss approach. Will provide CEOC with this Action Plan to follow-up and continue to suggest presentation of educational info at mtgs.
9	Ensure the Enterprise Resource Planning (ERP) implementation includes DBE reporting of bid award for all contracts.	The development & implementation of the ERP system is in place. P&C has full time person assigned to project to ensure that this need will be met in the new system	Ongoing – regular meetings with E&CP, P&C and EOCP to review off the shelf options and recommend go forward plan – meeting held 9/26. EOCP has reviewed one potential software package and E&CP has reviewed an additional software package. Staff will attend 10/16/2008 launch of additional software used by Airport Authority, Port Authority and other municipalities.
10	A formal, written response from the Mayor's office addressing the issues and questions put forth in Council President Pro Tem Anthony Young's memo dated May 21, 2007	Complete 8/01/07	N/A
11	Request an opinion from the City Attorney to update the Rules Committee on relevant case law applicable to equal opportunity contracting.	Completed – 9/10/07	N/A
12	Further information on how a determination is made to <i>require</i> an Equal Opportunity Plan	Article 2, Division 27 Section 22.2705 of the San Diego Municipal Code sets the standard	Future action for consultant

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Equal Opportunity Contracting Program Action Plan

	in the presence of disparity. Details on the frequency and procedures involved in periodic reviews should also be provided to the Rules Committee and City Council.	for requirement of Workforce reports and EEO plans. The consultant will review the current process and make further recommendations.	
13	EOC department feedback and further information to the Rules Committee and City Council on investigations into discrimination complaints and the staff required to perform these procedures.	EOC frequently investigates	<i>Ongoing</i> - Existing staff completed open investigation - results included in July report to PS&NS; will continue to report as complaints arise.
14	A status update from the Citizens Equal Opportunity Commission on the progress of the EOC Program to be presented to the Rules Committee in the fall of 2007.	This update was discussed at the 10/03/07 CEOC meeting – members voted to have recommendation prepared for 10/10/07 Rules Committee meeting	<i>In Process</i> – staff to request new timeline from CEOC.
15	Update Council Policy 300-10 to reflect the goals of current equal opportunity programs, and department reporting responsibilities.	Mayor's staff ready to work with City Council, IBA and City Attorney regarding these updates	Complete – included in report and presented to Council for adoption 09/22/08
16	Consider the results of the IBA survey for new ideas to enhance EOC program efforts.	Consultant to review and incorporate appropriate suggestions into programmatic enhancement recommendations	<i>Ongoing</i>
17	Report to Rules Committee on all contracts under \$250K.	Complete – 10/10/07	
18	Independent performance audit of	Complete – presentation provided to Audit	Status of Audit Committee action unknown.

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	EEOC program referred to the Audit Committee.	Committee 10/15/07	
19	Create taskforce/working group to include staff from Mayor, Council Offices, IBA and City Attorney.	Complete – Mayor/CEOC Summit held 8/28/07. Additional meetings to follow.	Meetings held on as needed basis
20	Work with members of the Community to provide information regarding the process and develop strategy	Complete – Mayor/CEOC Summit held 8/28/07. Additional meetings to follow	Ongoing meetings scheduled and will continue.
21	Strengthening SCOPE	Program analysis conducted by Franklin Lee – submitted to various stakeholders and suggestions recorded. Input to be received from CEOC at 4/02/08 meeting – staff recommendation to be provided to Committee	Complete 5/14/08 - CEOC recommended the City accept and implement all of Franklin Lee's 2/06/08 recommendations with the revisions proposed by the City Attorney's 3/28/08 memorandum. Additional stakeholder meeting held 6/05/08 for input – 6/12/08, 6/26/08 Franklin Lee proposed amendments to his recommendations – included in report Council adopted 9/22/08
22	Staff Training	F. Lee to conduct training on investigating complaints and compliance monitoring as it relates to City's Nondiscrimination Ordinance to EOCP staff	Complete - EOCP training 6/06/08 Training provided to the Right-of-Way Design and Architectural Engineering & Parks staff (75+ attendees) 6/25/08. The session covered EOC processing of 1472's, SCOPE evaluations, and the use of standardized Executive Summary language. Field Engineering senior staff will received training 7/15/08 with an additional session conducted 7/18/08 for the remaining

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			Engineering staff. Participated in two Web training classes sponsored by Insight Center – Effective Mentor Protégé Initiatives and M/W/DBE Programs; Impact of Prop. 209
23	EOCP Staffing	Mgt Analyst to be hired 8/08, Admin. Asst to be hired 9/08	Ongoing – Supervisor hired 9/08/08, Mgt Analysts and Admin. Asst to be hired October
24	Contract Compliance	Contract Monitoring Responsibilities included in 2/25/08 report to Committee.	Ongoing – update process and procedures as program changes are made
25	Update Specification Language	N/A	Complete - initial review and standardized language based on funding source, however ongoing reviews continue to ensure clarity.
26	Increased Outreach & Business Re-Engineering of City Processes (2/25/08 Council Meeting report)	Efforts taken by P&C and EOCP – a. simplification of bid documents b. tiered insurance and bonding (Risk, City Attorney and P&C working on tiered system), c. expansion of mentor protégé program, Expansion of “How to Do Business with the City” workshops d. and standardization of bid document language regard EO requirements.	a. Ongoing – EOCP, P&C, City Attorney ongoing reviews – updated EOCP requirements, continue to review and simplify overall document b. Complete – Completed review of insurance & bond requirements – minor changes have been incorporated into the solicitation documents. c. Partially Complete – P&C holding quarterly workshops Ongoing - began working with San Diego Regional Chamber of Commerce and City’s Small Business Advisory Board – progress is slow, therefore, additional efforts being made by researching Caltrans mentor protégé program with the

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			intent of a possible partnership. d. Partially Complete Completed initial review and standardized language based on funding source; however ongoing reviews continue to ensure clarity.
27	Small Local Business Enterprise Program	Draft program design submitted by consultant. City Attorney reviewing – upon completion, CEOC will be asked to host meetings to obtain input from stakeholders and provide a report based on the input. Report will be used to assist in final draft of program.	Ongoing – completion of City Attorney review delayed due to priority review of SCOPE recommendations, Council Policy development and specification language. Once adoption of SCOPE recommendations, review will resume. Upon completion of review and discussion with consultant, next steps will be taken. Target to forward to CEOC – January 2009.
28	Outreach Efforts	N/A	Ongoing – activities included in April and July updates
29	Interdepartmental Relationships	Complete - Formal weekly held meetings to address issues regarding training needs, department goals, specification language, etc. DCOO Public Works, Eng. Dir. and/or Asst. Dir., MWWWD/Water Dept. Head, Gen Serv. Dir., Admin. Dir., Purchasing Dir., EOCP Manager, various Deputy Directors, City Attorney	Formal meetings now being held monthly. As needed meetings scheduled to resolve issues as they arise.
30	Bonus Points	Staff recommended including bonus points as part of SCOPE – included concept in report #	In Process - Stakeholder meeting held 8/27/08 input received - additional meetings required to further

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		- as indicated in report, input on regarding the elements and point assignment to be requested from stakeholders and F.Lee prior to final implementation	define program and it's elements particularly what programs qualify and to ensure equity demonstrated success and credibility of programs – additional incentive options proposed. Additional meetings to be scheduled with stakeholders and CEOC. Will inform Committee and Council of results
31	Disparity Study	Await outcome of Coral Construction case as advised by consultant Franklin Lee 04/02/08	Continue to wait for outcome as advised. Awaiting goal assignments resulting from CA Dept. of Transportation Disparity Study
32	Consultant Selection Panels	N/A	Ongoing - Admin Director initially participated in high dollar consultant selection panels. All consultant panels are now attended by EOC staff. (i.e. as needed PM Project Integration, Financial Support Svcs, Design/Build Electrical Upgrade – MWWD)
33	Contractor Code of Conduct	N/A	Ongoing - OEI – lead. Provided input, F. Lee reviewed, concept presented to CEOC 10/01. Scheduled to return with final draft document 12/03/08
34	Management Field Visits	N/A	Program Manager, Director and EOC staff conducting periodic compliance reviews
35	Implementation of Improvements to SCOPE	N/A	Ongoing – Contractor training to begin 10/17/08; Requirements in bid documents 11/01/08(per P&C); electronic notification to contractors 10/31/08(per P&C); meeting w/SDDPC re: contractor access to city

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			website to post their notices held 10/02/08 – follow-up meetings required.
36	Update Statistics for Construction (4/08-6/08), Consultant (1/08-6/08) and Commodities (1/08-6/08) with ethnicity and gender information	Due: 11/06/08	Ongoing – letters sent to construction contractors; checking data bases for consultant and commodities
37	Manually gather sub-consultant information on 1/08-6/08 statistics	Due: 11/21/08	Ongoing – Manual effort - need to pull hard files
38	Gather, verify and report historical data	Initial steps taken – progress reports to be provided	Ongoing – received rough data on construction projects 10/01/08 for FY03,04,05,06
39	Develop a collaborative, coordinated support network to provide technical assistance to existing and potential bidders and proposers.	N/A	In Process -Capacity Development – initial meetings conducted with Council for Supplier Diversity, Asian Business Association, Mabuhay Alliance and San Diego Contracting Opportunities Center, Metropolitan Water District of Southern California to provide technical assistance and program benchmarks. Next mtg. scheduled for 10/08/08.
40	Design and develop a “Demonstration Project” for purposes of building a larger and diverse base of subcontractors for underground City projects.	N/A	In Process – initial meeting held with Public Works Department and Consultant. Follow-up meetings to be scheduled for late October.

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**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 or 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 *(Memo of Justification must be attached, see Check List on back of page.)*

- A. Sole Source
- B. Emergency (pursuant to Charter Section)
- C. Public Entity
- D. No Potential Subcontracting Opportunities
 – Copy of waiver request sent to COO on:
- E. Government Bulk Purchasing Arrangement
 – Copy of waiver request sent to COO on:
- F. Other (please explain in justification memo)

<u>EOC ACTION</u>	
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 memo 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 EOC department must notify the Chief Operating Officer that it has received a waiver of this type.
2. The requesting department must notify EOC that it has used a waiver granted under one of these provisions. Such notification should take place within five days of the date of use by submitting to the EOC a copy of the approved waiver with the "Department Action" box completed.
3. Departments exercising waiver authority under one of these provisions must appear before City Council and report on their use of such waiver authority.

All non-emergency waiver requests must be approved by EOC with the final determination from City Council.

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: Beryl Rayford, EOC Program Manager, MS 56**

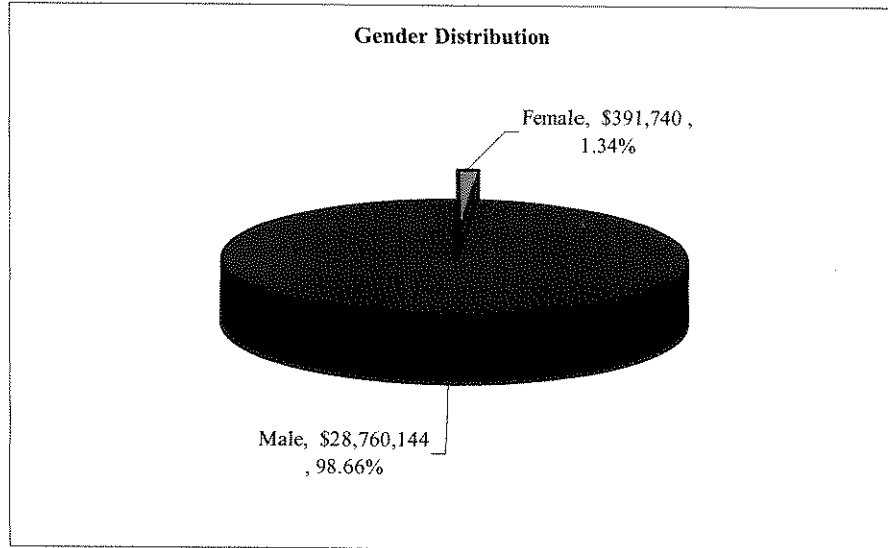
☎ **For further assistance, contact EOCP at X67161**

**CONSULTING CONTRACTS SUMMARY - Update
PRIMES ONLY
(01/08 – 06/08)**

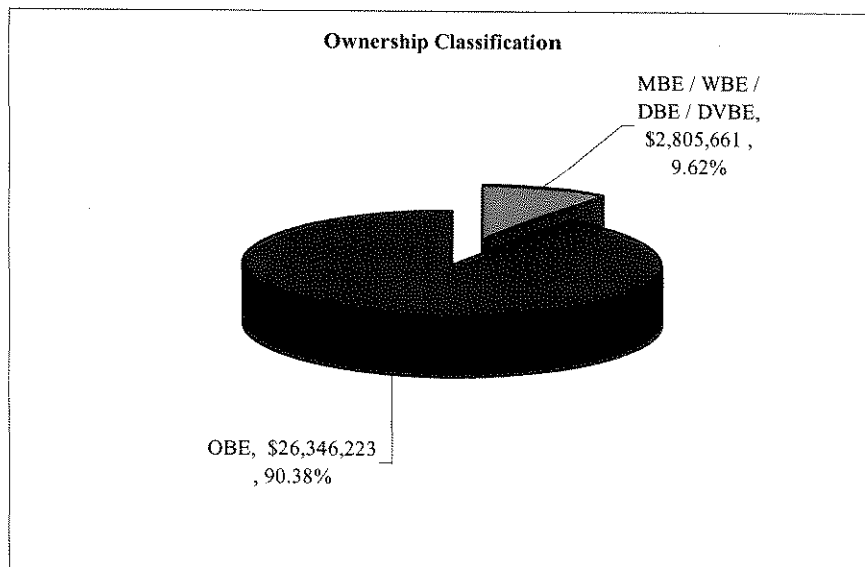
CERTIFICATIONS VERIFIED 10/08

Gender Distribution	Contracts	Dollars	Percentage (based on dollars)
Female	2	\$ 391,740	1.34%
Male	238	\$ 28,760,144	98.66%
Not Available *	0	\$ -	0.00%
	240	\$ 29,151,884	100%

* LLC, Partnerships, publicly owned, family owned

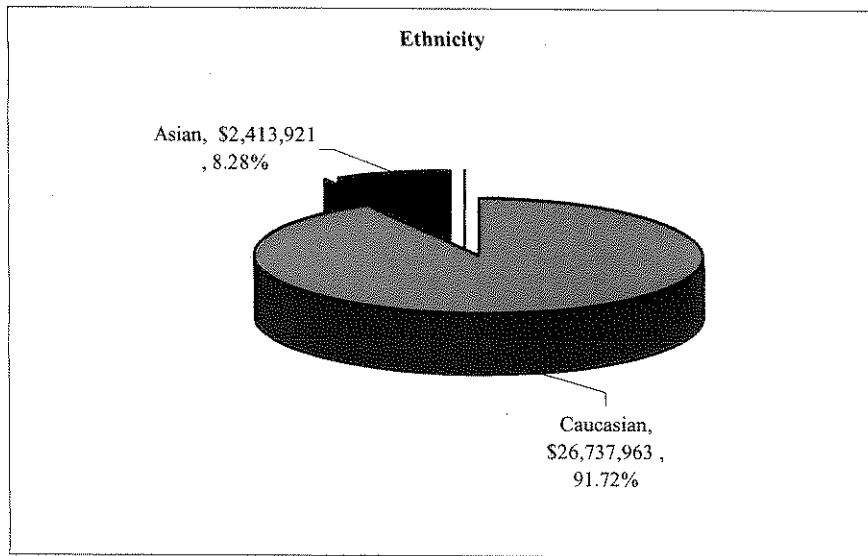


Ownership Classification	Contracts	Dollars	Percentage (based on dollars)
MBE / WBE / DBE / DVBE	11	\$ 2,805,661	9.62%
OBE	229	\$ 26,346,223	90.38%
	240	\$ 29,151,884	100%



Ethnicity	Contracts (Primary only)	Dollars	Percentage (based on dollars)
Caucasian	231	\$ 26,737,963	91.72%
Hispanic	0	\$ -	0.00%
African American	0	\$ -	0.00%
Alaskan Native	0	\$ -	0.00%
Asian	9	\$ 2,413,921	8.28%
Filipino	0	\$ -	0.00%
Native American	0	\$ -	0.00%
Pacific Islander	0	\$ -	0.00%
Other *	0	\$ -	0.00%
	240	\$ 29,151,884	100%

* LLC, Partnerships, publicly owned, family owned

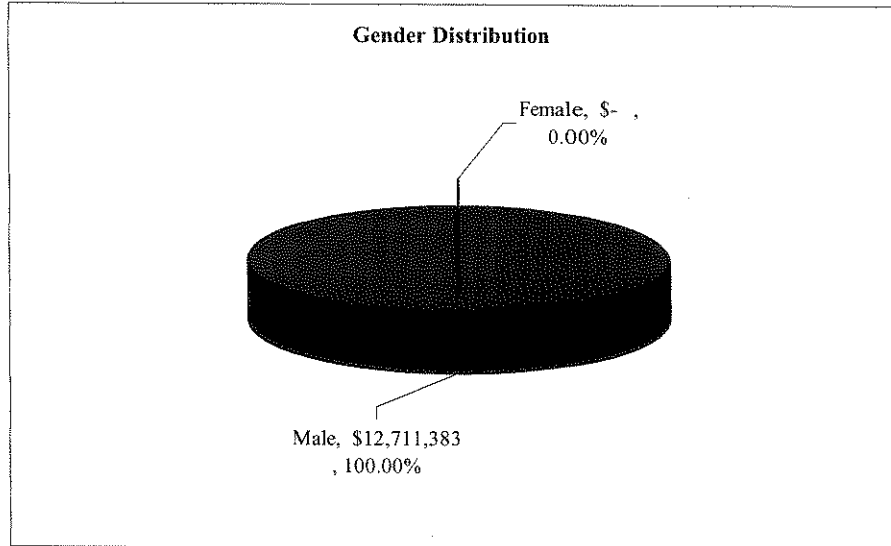


**COMMODITY CONTRACTS SUMMARY - Update
(01/08 – 06/08)**

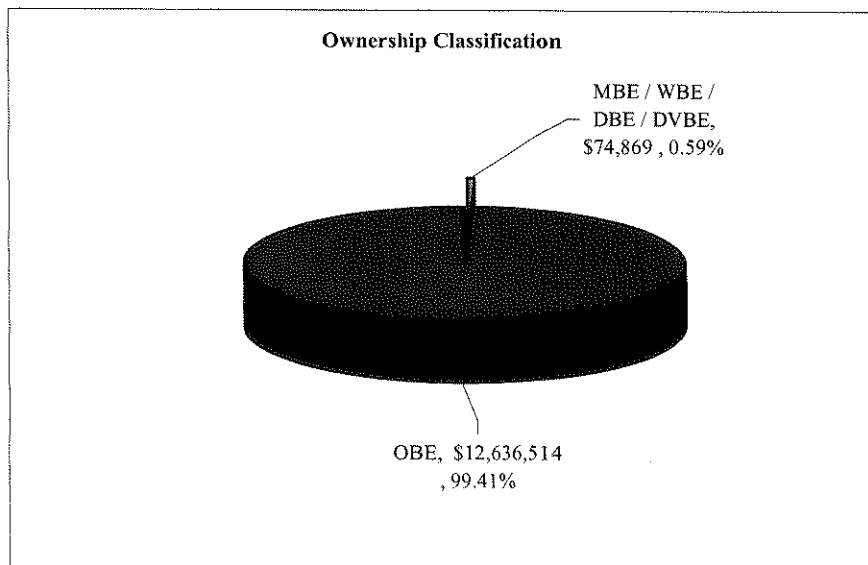
CERTIFICATIONS VERIFIED 10/08

Gender Distribution	Contracts	Dollars	Percentage (based on dollars)
Female	0	\$ -	0.00%
Male	72	\$ 12,711,383	100.00%
Not Available *	0	\$ -	0.00%
	72	\$ 12,711,383	100%

* LLC, Partnerships, publicly owned, family owned



Ownership Classification	Contracts	Dollars	Percentage (based on dollars)
MBE / WBE / DBE / DVBE	2	\$ 74,869	0.59%
OBE	70	\$ 12,636,514	99.41%
	72	\$ 12,711,383	100%



Ethnicity	Contracts (Primary only)	Dollars	Percentage (based on dollars)
Caucasian	70	\$ 12,636,514	99.41%
Hispanic	1	\$ 25,023	0.20%
African American	1	\$ 49,846	0.39%
Alaskan Native	0	\$ -	0.00%
Asian	0	\$ -	0.00%
Filipino	0	\$ -	0.00%
Native American	0	\$ -	0.00%
Pacific Islander	0	\$ -	0.00%
Other *	0	\$ -	0.00%
	72	\$ 12,711,383	100%

* LLC, Partnerships, publicly owned, family owned

