

THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED August 26, 2009 REPORT NO. 09-121(Revised)
ATTENTION: Rules Committee Agenda of September 2, 2009
SUBJECT: Equal Opportunity Contracting Program Update

REQUESTED ACTION:

None. Information only report.

STAFF RECOMMENDATION:

N/A

SUMMARY:

This report is the Equal Opportunity Contracting Program semi-annual report required by Council Policy 800-15. It provides construction, consultant and vendor participation statistics, programmatic updates, and actions taken to date in response to various City Council/Committee requests. It covers the period July 1, 2008 through June 30, 2009.

Statistics – FY2009

During this reporting period, the City awarded 75 construction contracts for a total of \$123,809,986. Certified firms received \$4,054,308 (3%) while non certified firms received \$119,755,679 (97%). A total of 53 projects valued at \$97,169,622 had race and gender neutral specifications (SCOPE), while 22 projects valued at \$25,558,237 were Federal and/or State funded with prevailing wage requirements. Details regarding ethnicity and gender are included in Attachment 1.

During this same period, Architectural and Engineering (A&E) consultant firms were awarded a total of \$76,323,322. Certified firms received \$8,394,091 (11%) while non-certified firms received \$67,929,231 (89%). Attachment 2 provides additional details regarding gender and ethnicity.

Non Architectural and Engineering consultant firms were awarded a total of \$27,837,764. Certified firms received \$3,726,484 (13%) while non-certified firms received \$24,111,279 (87%). Attachment 3 provides additional details regarding gender and ethnicity.

Subcontracting Outreach Program (SCOPE) (FY2009)

During FY09, EOC reviewed and analyzed SCOPE outreach documentation for 53 construction projects totaling \$97,169,622 or 78% of total construction dollars with either State or City funds where outreach requirements applied.

Internal Audit

An internal audit of SCOPE was launched pursuant to recommended changes outlined in Council Resolution R-304143 and approved by City Council in September 2008. SCOPE is currently being examined for performance improvement by the Office of the Internal City Auditor as requested. To date, preliminary interviews with key staff have been completed and a risk assessment of the program is being finalized. Two meetings were held August 20 and 27, 2009 to discuss internal controls in place to mitigate identified program risks.

SCOPE Goal Methodology

After a review of past goal methodologies, EOC and Engineering & Capital Projects revised the goal methodology for SCOPE projects. The new formula is primarily based on availability information similar to the Caltrans DBE Program Goal Methodology. Data from the North American Industry Classification System (NAICS) codes, County Business Patterns (CBP) and U.S. Census Bureau, as well as, historical City contracting data are utilized to calculate goals. This new process was implemented in July 2009. The overall process will continue to undergo a quarterly review and update of data sources.

Caltrans Goal Based Program (FY2009)

On March 30, 2009, the Division of Engineering Services and the Division of Procurement and Contracts (Caltrans) implemented its Federal Fiscal Year 2009 Disadvantaged Business Enterprise Business Enterprise (DBE) Goal and Methodology in response to its statewide disparity study. This methodology provides for a 6.75% race-conscious goal and a 6.75% race-neutral goal of an overall 13.5% program goal. The 6.75% race-conscious goal includes African-American, Asian-Pacific American, Women and Native American owned businesses which are referred to as Underutilized Disadvantaged Business Enterprises (UDBEs). The 6.75% race-neutral goal includes all certified Disadvantaged Business Enterprises. Hispanic and Subcontinent Asian American owned businesses are not included in the race conscious portion of program but are counted toward project and overall goals.

The City of San Diego proposed its Annual Anticipated DBE Participation Goal of 5.6% (1.5% race-conscious and 4.1% race-neutral) in June 2009. These numbers were

determined by EOC and Engineering & Capital Projects by evaluating the scope of work on scheduled Caltrans projects and availability of contractors in the San Diego region (San Diego, Imperial & Riverside Counties).

On June 11, 2009 the Associated General Contractors (AGC) San Diego Chapter filed a lawsuit against the California Department of Transportation's (Caltrans). The lawsuit targets Caltrans race-conscious goal methodology which requires contracts be awarded based on ethnicity and gender rather than lowest bidder.

Compliance Related Activities (FY09)

95% of action documents have been processed within our 3-day service level agreement. A new tracking system is being developed to include identification by contract type, funding source and project manager. This should allow for greater flexibility in data reporting. Details follow:

1472 – Request for Council Action: 340 processed
(Includes review & approval of Executive Summary language, analysis of workforce report, supporting documentation (B-Page) and verification of EOC contract requirement compliance)

1544 – Mayoral Action: 198 processed
(Includes analysis of workforce report and supporting documentation (B-Page) and verification of EOC contract requirement compliance)

PA 2625 – Mayoral Approval of Contract Award: 130 processed
(Includes analysis of workforce reports & verification of EOC contract requirement compliance)

TOTAL DOCS 668 processed

# of contract specifications reviewed and approved	67
# of pre-bids attended	76
# of consultant interview panels attended	15
# of consultant RFPs reviewed	37
# of subcontractor payments verified	58
# of site visits completed (no violations)	17
# of non-discrimination complaints received	0
# of EO plans requested & received	12
# of EO plans approved	10
# of EO plans pending additional information	2
# of Final Summary Reports received and approved	29
# of Final Summary Reports yet to be received	45

Construction Contractor Payment Process Review

The Federal Highway Administration conducted a Financial Integrity Review and Evaluation on the City project - First Avenue Over Maple Canyon-Seismic Retrofit Rehab. The evaluation team consisted of FHWA and Caltrans finance and engineering personnel who conducted a site visit. City and Caltrans staff were interviewed and project records reviewed. No findings were noted for the City's portion and FHWA commented in their final report that "the City of San Diego was well prepared for our visit which was evident in the completions of our review."

Minor Construction Program (FY2009)

The Minor Construction Program currently has 122 approved participants available for contracting opportunities. During FY 2009, 116 participants were accepted from a candidate pool of 133 applications. 17 were rejected as ineligible with 6 participants remaining from FY2008. Within the 122 approved participants, 11 are certified Disabled Veteran Business Enterprises and two are certified as Minority Business Enterprises. The Purchasing & Contracting Department's Client Report, indicates there were twenty-six (26) Minor Construction projects in FY 2009 totaling \$2,704,085. For comparison purposes, in FY 2008, there were fourteen (14) projects valued at \$900,359. EOC continues to meet with Engineering & Capital Projects staff to identify potential projects in the early design phase to include in the Minor Construction Program and conducts periodic outreach to increase program participation.

Mentor-Protégé Program (FY2009)

In FY 2009, Wiley Construction (MBE, 8A, HUB Zone certified) graduated from the Program. Upon entering the Program, Wiley's Bid, Performance and Payment bond single limit was \$200,000 and aggregate capacity limit was \$400,000. Today, their limits have increased to \$1,500,000 single and \$2,000,000 aggregate. There are currently 5 active protégés in the program with 3 additional protégés anticipated to begin September 2009.

Also during this fiscal year, the City became a member of Caltrans Calmentor Protégé Program Steering Committee.

Certification

In an effort to increase participation of certified small businesses in the City's contracting process, a staff person has been assigned to determine how the City can assist with certification services. Efforts thus far have included attendance at a California Unified Certification Program Executive Committee Meeting, meeting with the Chief of Caltrans Civil Rights Certification Unit and the Chair of the California Unified Certification Program, review of the Code of Federal Regulations 49 Part 26 regarding the participation of Disadvantaged Business Enterprises in Department of Transportation

Financial Assistance Programs, and onsite visits with a Caltrans Certification Analyst to verify the validity of the businesses and the owner's role/control within the business and meeting with . A tentative date has been set for the end of August for additional training with the City of Los Angeles.

Contractor/Vendor Registration System

Effective July 1, 2009 the City of San Diego successfully implemented the One SD and SAP enterprise resource planning system, which encompassed the financial and logistics modules. This system included a vendor registration component, which the City is now using.

In mid to late June, in preparation for the implementation of the One SD system, over 16,000 City vendors were contacted to update their status and to inform them of the City's move to the new system. The vendors receiving this notification were contained in the AMRIS and OPIS databases, as well as the contractor vendor registration system.

Effective July 1, 2009 the contractor vendor registration system is no longer being maintained. However, City staff is still afforded access for historical purposes.

Procurement of Off the Shelf Software Package

A Request for Proposals for Off the Shelf Software that provides the City with an automated bidder notification system and enhances our reporting and compliance capabilities was issued in May 2009 with multiple responses received. A selection panel was convened that included representatives from EOC, Engineering & Capital Projects and Information Technology. Proposals were reviewed and a shortlist developed. As a result of scheduling conflicts and competing priorities, demonstrations and interviews were not able to be held until August 25th and 27th. Final selection and award is anticipated in September 2009 with a 90 day implementation deadline.

Outreach Efforts (FY2009)

During this fiscal year, the Asian Business Association (ABA) received a Small Business Enterprise Program grant to provide business development and technical assistance curriculum to small businesses. In a joint effort between the ABA, the San Diego Regional Minority Supplier Diversity Council and the City, a six-week course was conducted for 11 participants ending in July 2009.

The San Diego Regional Minority Supplier Diversity Council also recognized City efforts to increase participation by including MBE/WBE certification levels and acceptance of additional certification agencies in contract documents. EOC Program Manager Beryl Rayford received the "2009 Advocate of the Year" award from the Diversity Council at their annual event in June.

Recognizing that professional and community agencies add value to City efforts to reach the small business owner, relationships have been developed and maintained with the following agencies:

Asian Business Association	Latino Builders Association
MultiCultural Contractors Association	Black Contractors Association
Public Agencies Consortium	San Diego Contracting Opportunities Center
SD County Water Authority	Metropolitan Water District
SD Regional Minority Supplier Development Council	MABPA
Apprenticeship Subcommittee	SD Regional Airport Authority
SD Hispanic Chamber of Commerce	Small Business Advisory Committee
SD Hispanic Contractors and Professional Association	Urban League
SD Regional Chamber of Commerce	American Subcontractors Association

EOC has conducted the following events:

Building Profitable Relationships 2009	2/4/09
SLBE Community Outreach Sessions	
Small Business Advisory Board	3/25/09
Black Contractors Assoc.	4/1/09
SD Regional Chamber of Commerce	4/3/09
Elite DVSB	4/7/09
San Ysidro Civic Center	4/8/09
AGC	4/21/09
Small Business Advisory Board	5/14/09
US Hispanic Contractors & Professionals	5/29/09
American Subcontractors Assoc.	5/29/09
Asian Business Association	6/09/09
Potential Bidders Conference	3/21/09

EOC provided information at the following major events:

- Caltrans 5th Annual Procurement Fair
- Paths to Partnerships – SD County Water Authority Annual Outreach Event
- Asian Business Association Luncheon
- San Diego Regional Airport Authority-Turner Construction School
- Urban League Breakfast Seminars
- San Diego Regional Minority Supplier Development Council Annual Awards
- BCA – Chat N Chew Luncheon Seminars
- Operation Opportunity
- Sub for Subs – CCDC Annual Outreach Event
- Fiesta del Sol Business & Career Fair
- American Subcontractors Association

- California State & San Diego County Hispanic Chamber of Commerce – Upcoming 30th Anniversary

Local Small Business Program (FY2009)

A progress report on the status of our efforts was presented to the Rules Committee May 27, 2009 (Report # 09-076). Several next steps were presented which included: collection of final survey results; completion of meeting schedule; review/analyze survey results and all suggestions/City Attorney Opinion; prepare revised draft proposal and analytical data; obtain feedback; and prepare final report and return. The Committee voted 5-0 to refer to staff and the City Attorney's office for analysis the following options:

- Limit construction portion of program to contracts of a certain dollar amount, i.e. \$1 million,
- Make substantive findings that small or local business subcontracting requirement would further "legitimate governmental interest" and, if combined with bid preference, limit to contracts of a certain dollar amount,
- Include an analysis of Caltrans' outreach programs and any banking and insurance issues and
- Meet with stakeholders prior to returning with a final recommendation.

Several steps have been taken to date, such as gathering additional definitions of small business and identifying the number of certain types of local small businesses in San Diego County. Additional work needs to be completed including an analysis of the bid discount given current economic conditions, determination of a final definition of "small business" by category (i.e. construction, consultant, vendor, etc.), documentation of substantive findings and scheduling community meetings. EOCP staff and the City Attorney's Office will continue to work on these issues.

Federal Reports

Two federal reports were completed by EOC staff – Semi-Annual Labor Standards Enforcement Report and the Section 3 Summary Report. The Semi-Annual Labor Standards Enforcement Report lists City projects that were CDBG funded and subject to the Davis-Bacon and Related Act and Contract Work House and Safety Standards Act. The Section 3 Summary Report is a compilation of all construction trades that worked on CDBG funded projects. It reflects the total amount of hours worked by Section 3 residents (low-income) including training opportunities made available on eligible projects.

Citizens Equal Opportunity Commission (CEOC)

The Mayor recently appointed a new CEOC member, Stampp Corbin, as the LGBT representative. He is a founder of the e-Waste industry and has successfully pioneered the resale and recycling of information technology for Fortune 500 companies.

CEOC has addressed many issues, the more prominent being the AGC lawsuit against Caltrans, the proposed Small Local Business Enterprise Program and Caltrans race conscious goal policy.

The Commission held a strategic planning session in conjunction with the City's Business Office. During the session, the Commissioners formed subcommittees focused on equal employment and contracting. In addition, they prepared their bi-annual report which is included as Attachment 3.

Training Update

In addition, to the prior reported SCOPE training provided to Engineering staff and stakeholders, department management is researching an appropriate training curriculum provider for EOC staff on labor compliance.

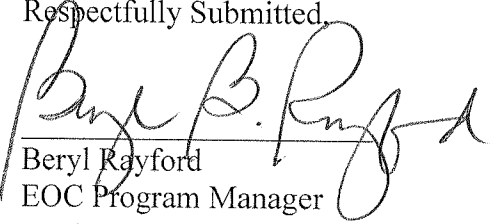
EOC staff has provided training on the new SCOPE requirements as follows:

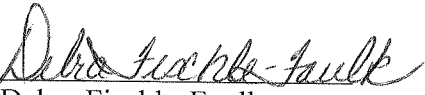
- Engineering & Capital Projects Department staff – 10/08;
- Construction Stakeholders - 10/20/08;
- Pre-Qualification Program participants - 10/31/08;
- Minor Construction Program participants - 12/4/08.

Redevelopment Agency Update

The City Redevelopment Division continues to work with the City's Equal Opportunity Contracting program staff to ensure Agency and Corporation contracting performance is monitored and reported for vendor/consultant contracts and Development Agreements. As a part of this effort, Agency staff previously identified the need for an Equal Opportunity Contracting Policy and Handbook for consideration by the Agency Board. While the development of the handbook has been delayed, efforts to develop the policy and handbook are underway. It is anticipated the policy will be available for consideration by the Agency Board by the end of the Fiscal Year.

Respectfully Submitted,


Beryl Rayford
EOC Program Manager

Concur: 
Debra Fischle-Faulk
Director, Administration

Approved: 
Wally Hill
Assistant Chief Operating Officer

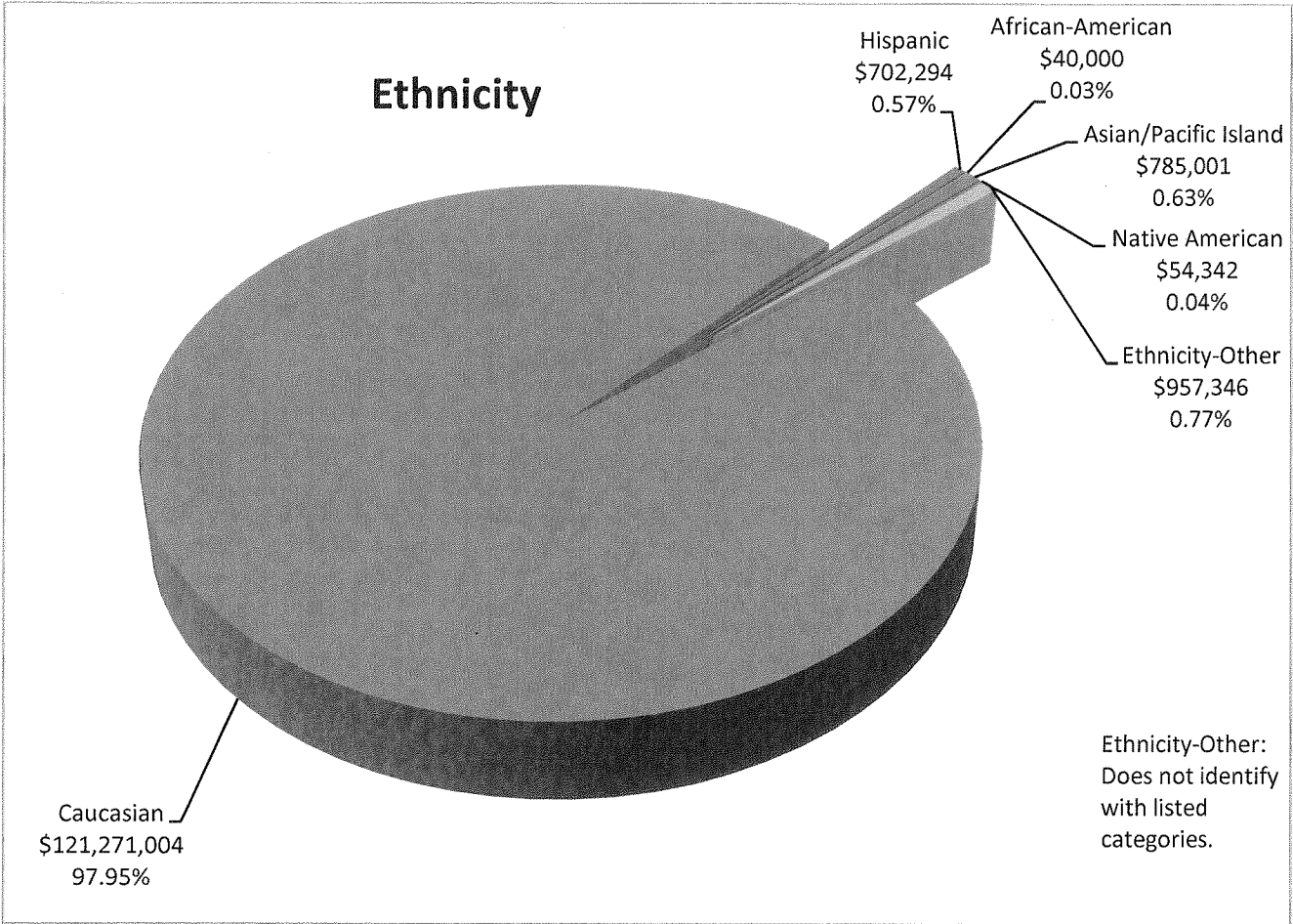
- Attachments:
1. Construction Contracts Charts
 2. A&E Consultant Contracts Charts
 3. Non A&E Consultant Contract Charts
 4. CEOC 2009 Spring Quarterly Report

Fiscal Year 2009
Construction Contracts



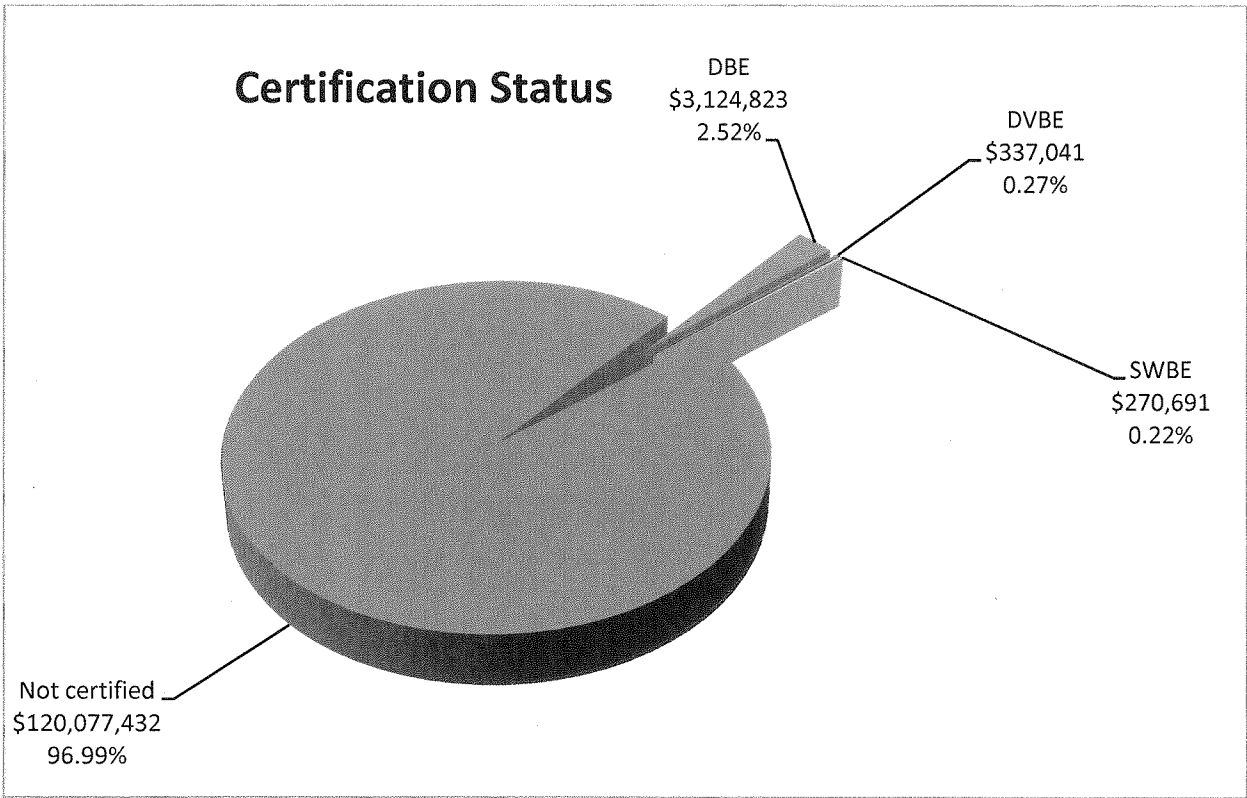
	<u>Number of Contractors</u>	<u>Dollar Value</u>	<u>Percentage</u>
Male	167	123,224,146	99.53%
Female	6	585,840	0.47%
Total Prime & Subcontractors	173	123,809,986	100.00%

Fiscal Year 2009
 Construction Contracts



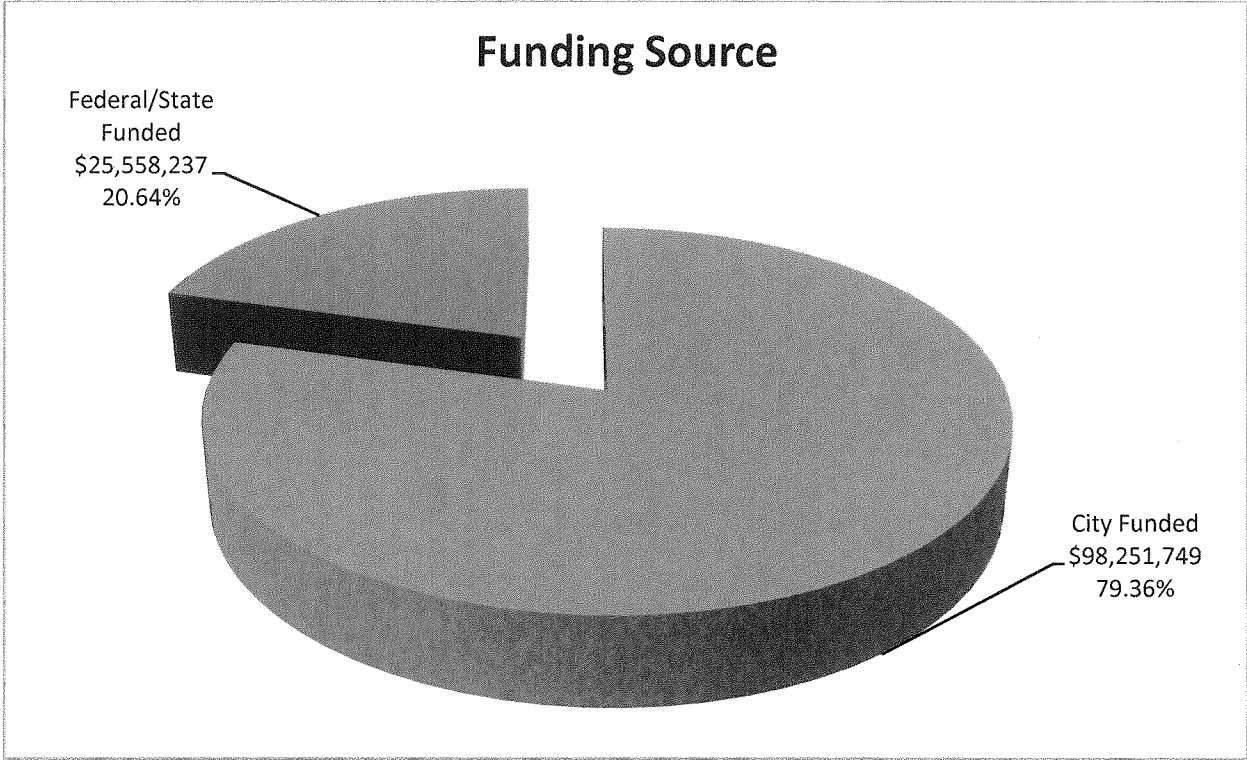
	Number of Contractors	Dollar Amount	Percentage
Caucasian	155	\$121,271,004	97.95%
Hispanic	9	\$702,294	0.57%
African- American	1	\$40,000	0.03%
Asian/Pacific Island	2	\$785,001	0.63%
Native American	1	\$54,342	0.04%
Ethnicity-Other	5	\$957,346	0.77%
Total Prime & Subcontractors	173	\$123,809,986	100.00%

Fiscal Year 2009
Construction Contracts



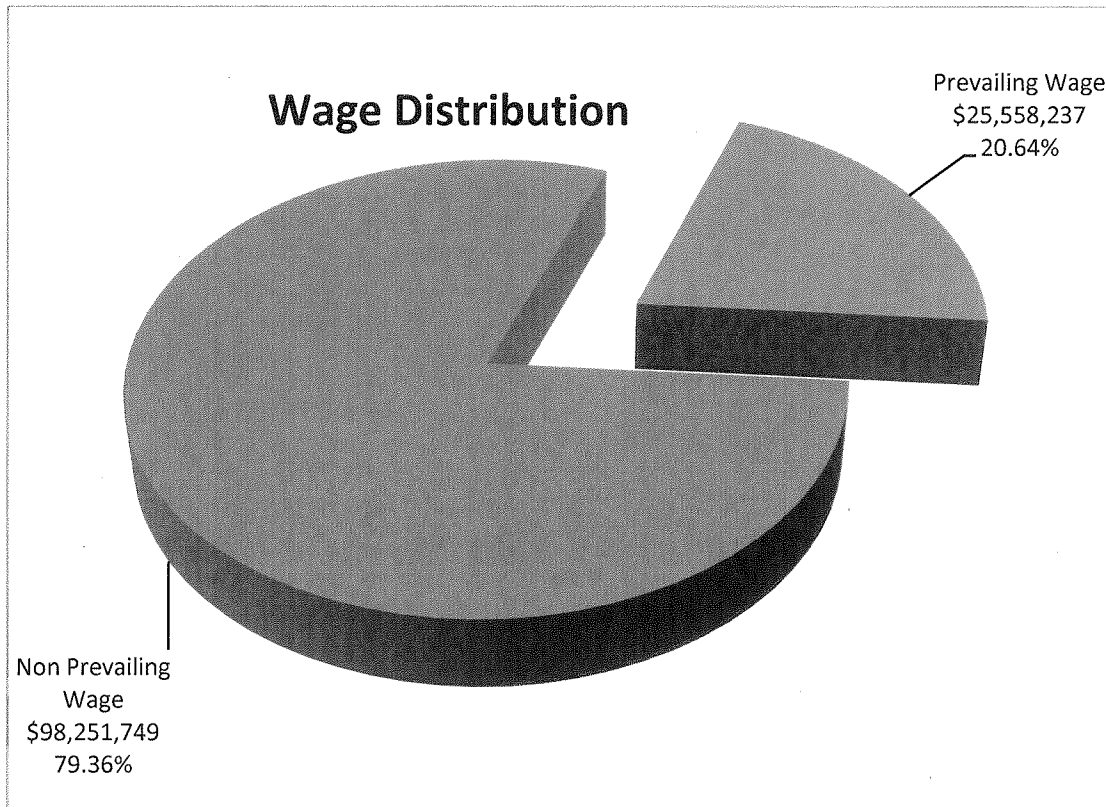
	Number of Contractors	Dollar Value	Percentage
DBE	23	3,124,823	2.52%
DVBE	4	337,041	0.27%
SWBE	1	270,691	0.22%
Not certified	145	120,077,432	96.99%
Total	173	123,809,986	100.00%

Fiscal 2009
Construction Contracts



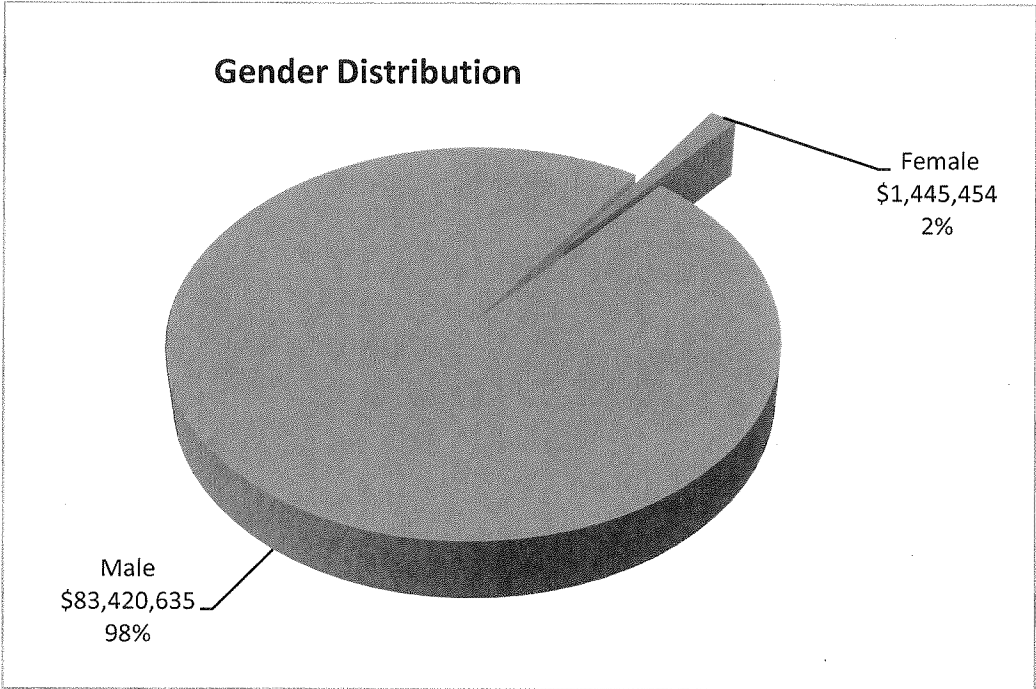
	<u>Number of Contracts</u>	<u>Dollar Value</u>	<u>Percentage</u>
City Funded	53	98,251,749	79.36%
Federal/State Funded	22	25,558,237	20.64%
Total	75	123,809,986	100.00%

**Fiscal Year 2009
Construction Contracts**



	Number of Contracts	Dollar Value	Percentage
Prevailing Wage	22	25,558,237	20.64%
Non Prevailing Wage	53	98,251,749	79.36%
Total	75	123,809,986	100.00%

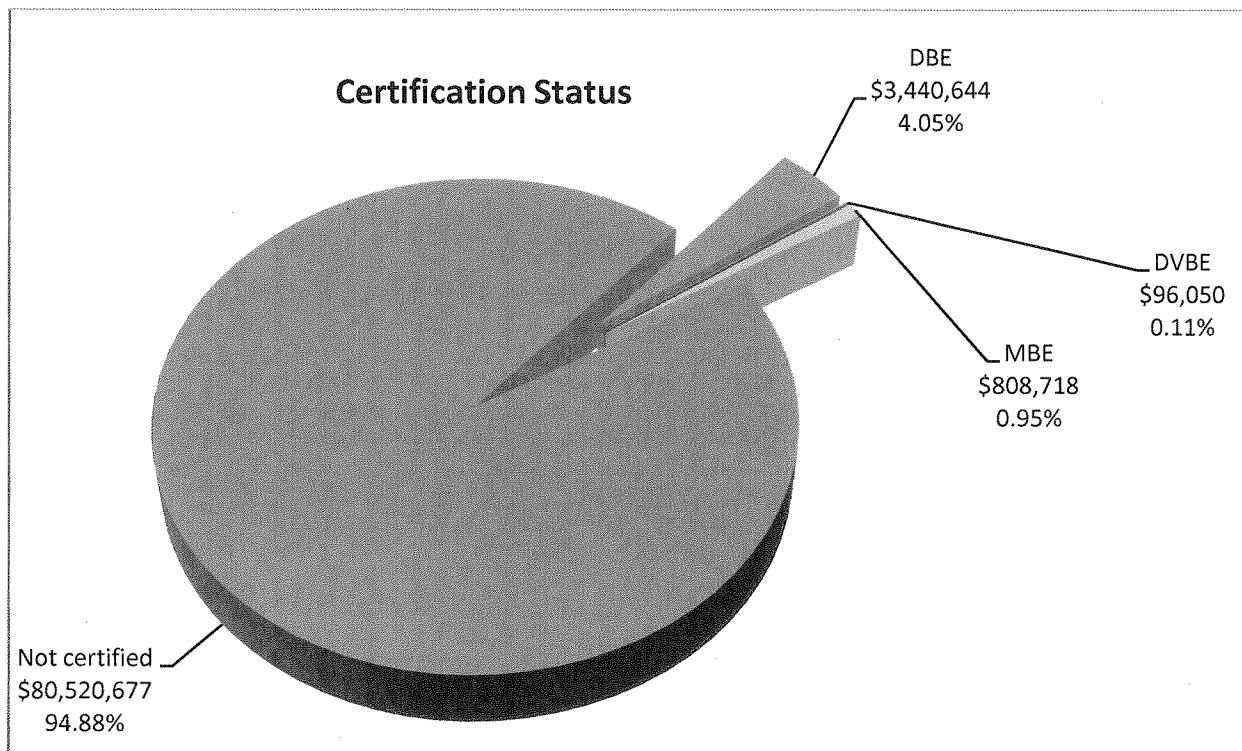
Fiscal Year 2009
A&E Consultant Contracts



	<u>Number of Contractors</u>	<u>Dollar Value</u>	<u>Percentage</u>
Male	141	83,420,635	98.30%
Female	13	1,445,454	1.70%
Total # of Prime & Subconsultants	154	84,866,089	100.00%

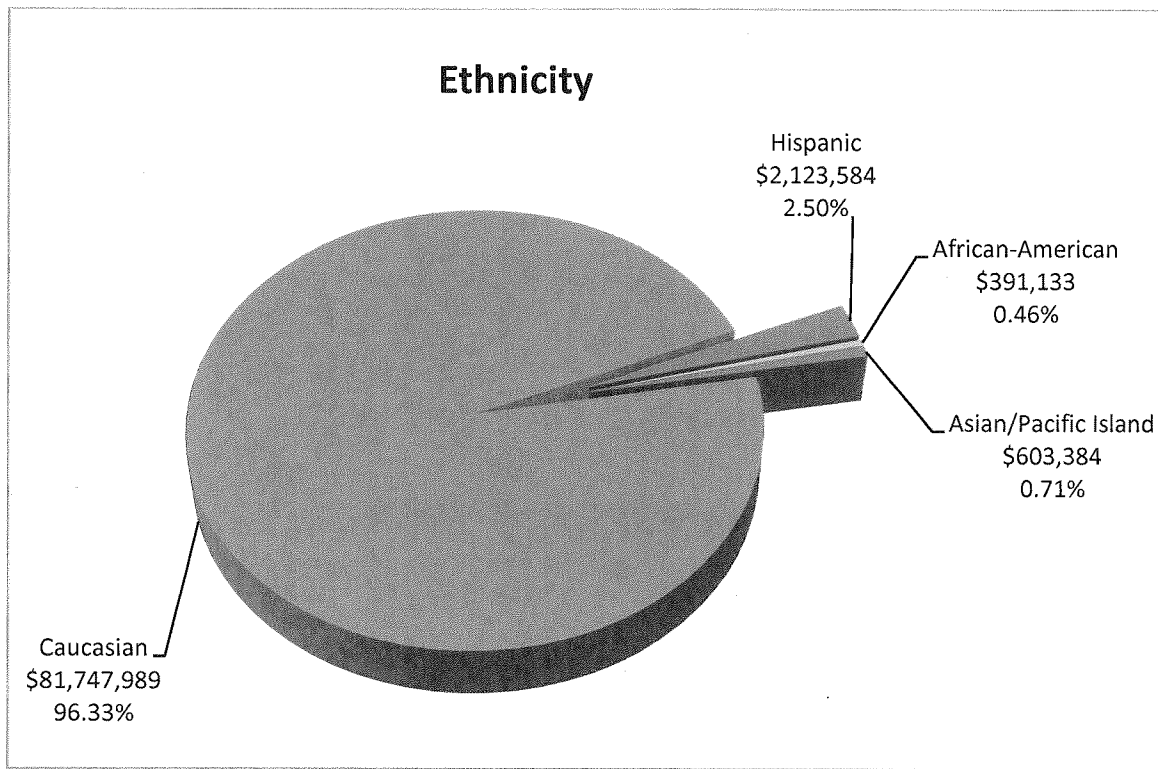
Fiscal Year 2009

A&E Consultant Contracts



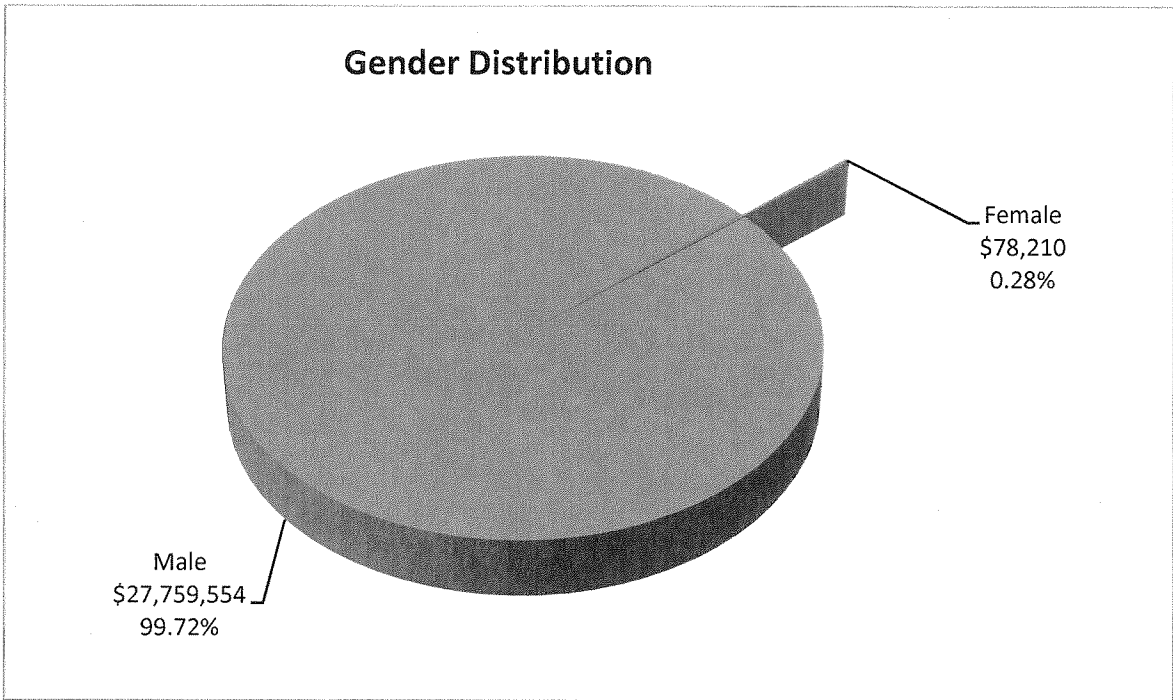
	Number of Contractors	Dollar Value	Percentage
DBE	28	3,440,644	4.05%
DVBE	1	96,050	0.11%
MBE	3	808,718	0.95%
Not certified	122	80,520,677	94.88%
Total	154	84,866,089	100.00%

Fiscal Year 2009
A&E Consultant Contracts



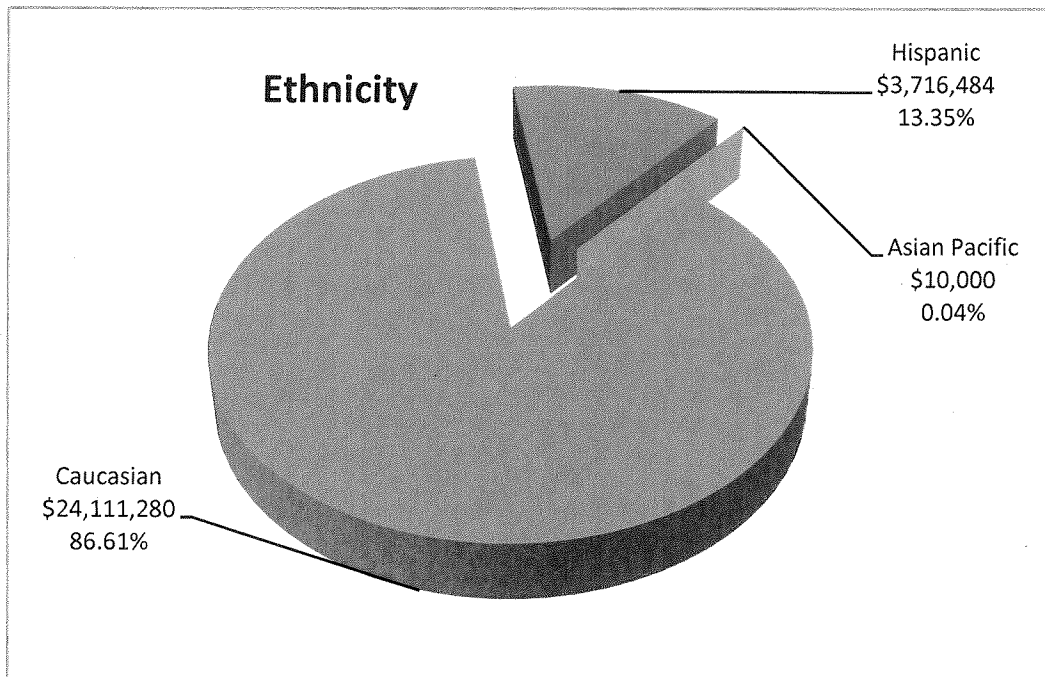
	Number of Contractors	Dollar Value	Percentage
Caucasian	135	81,747,989	96.33%
Hispanic	12	2,123,584	2.50%
African-American	3	391,133	0.46%
Asian/Pacific Island	4	603,384	0.71%
Total Prime & Subcontractors	154	84,866,089	100.00%

Fiscal Year 2009
Non A&E Consultant Contracts



	<u>Number of Contractors</u>	<u>Dollar Amount</u>	<u>Percentage</u>
Male	107	\$27,759,554	99.72%
Female	1	\$78,210	0.28%
Total # of Prime & Subconsultants	108	\$27,837,764	100.00%

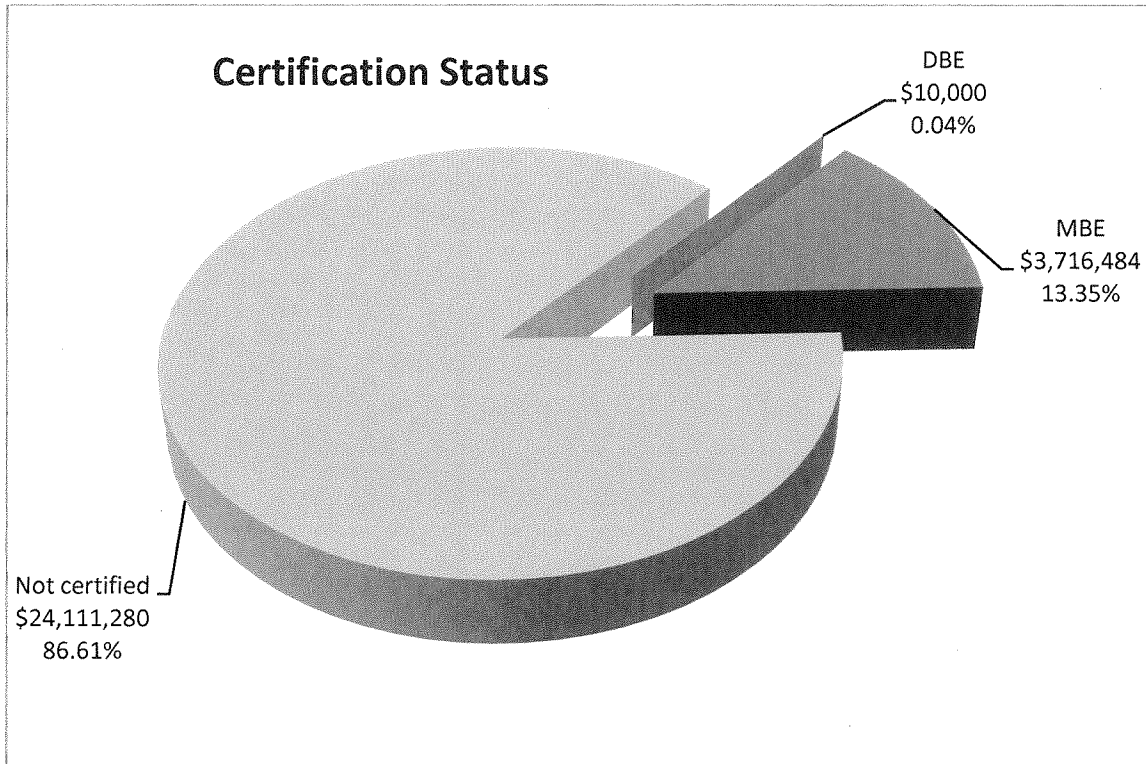
Fiscal Year 2009
Non A&E Consultant Contracts



	Number of Contractors	Dollar Amount	Percentage
Caucasian	165	\$24,111,280	86.61%
Hispanic	4	\$3,716,484	13.35%
Asian Pacific	1	\$10,000	0.04%
Total Prime & Subcontractors	170	\$27,837,764	100.00%

Fiscal Year 2009

Non A&E Consultant Contracts



	<u>Number of Contractors</u>	<u>Dollar Amount</u>	<u>Percentage</u>
DBE	1	\$10,000	0.04%
MBE	2	\$3,716,484	13.35%
Not certified	105	\$24,111,280	86.61%
Total	108	\$27,837,764	100.00%



THE CITY OF SAN DIEGO

DATE ISSUED: **August 26, 2009** REPORT NO. 09-121

ATTENTION: Honorable Mayor, City Council and The Committee on Rules, Open Government and Intergovernmental Relations of the City Council

SUBJECT: Citizens' Equal Opportunity Commission 2009 Spring Quarterly Report

REFERENCE: Municipal Code Chapter II, Article 6, Division 0, Section 26.16; Section 43 of the City Charter-amended 11-4-1969. Amended by Ordinance 19255 on 1/26/04.

SUMMARY

THIS IS AN INFORMATION ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE CITY COUNCIL.

BACKGROUND

The Citizens' Equal Opportunity Commission (CEOC) was established, pursuant to the authority of Municipal Code section 26.16 enacted on November 12, 1975, as an advisory commission to the Mayor and City Council. The duties of the commission include monitoring and/or evaluating the Equal Opportunity Program of the City; advising on a continuing basis the Mayor, City Council, City Manager, Civil Service Commission and other appropriate agencies of City government; submitting written quarterly reports which evaluate the progress of the City and its agencies for review and acceptance by the Rules, Open Government and Intergovernmental Relations Committee ("the Rules Committee") and, upon acceptance, for submission to the full City Council. Other duties of the commission include assisting the City in recruitment of competent minorities, women and the disabled and promoting the City of San Diego as an Equal Opportunity Employer and as a provider of equal opportunity to individuals and firms desiring to contract with the City. Commissioners are appointed by the Mayor and confirmed by the City Council. They serve two-year terms, without compensation. There are eleven commissioners, four of whom are at-large commissioners, and seven of whom represent the following constituencies: Latino, African-American, Asian/Pacific Islander, Native American, Filipino, Disabled and Lesbian/Gay/Bisexual/Transgender.

The CEOC meets regularly at 6:00 p.m., on the first Wednesday of each month in the 12th Floor meeting room of the City Administration Building located at 202 C Street, San Diego. The

Citizen's Equal Opportunity Commission

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meetings are publicly noticed and open to the public. In addition, beginning in 2004, the CEOC has held a monthly priority setting meeting, also open to the public and publicly noticed, at 8 a.m., on a weekday during the week following the regularly-scheduled Wednesday evening meeting.

OVERVIEW

The City's programs which have as their stated goals the achievement of equal opportunity can be generally broken down into two components, employment and public contracting. The public contracting aspect of the City's programs involves the City's agreements with non-employed individuals and firms who provide services to the City, for example through consulting, the supply of goods and materials, and the construction of public works. There is, therefore, no single "Equal Opportunity Program" on which the CEOC's attention is focused. Instead, as discussed below, the CEOC has monitored a number of different programs whose stated goals are to afford equal opportunity.

A. Employment.

As to the City's program to provide equal opportunity as an employer, the CEOC has not been provided sufficiently current data regarding the City's employed workforce to enable it to provide a current and meaningful evaluation. The CEOC has asked City staff to arrange for its receipt of updated data, and a report from the City relative to these matters is scheduled to be presented to the CEOC at its August, 2009 business meeting.

However, based on information provided to the CEOC by City personnel in the not-too-distant past, one matter relative to City employment is worthy of note here. While the City appears to take seriously its obligation to make its facilities accessible to members of the community with physical disabilities, and while the City has incorporated into its Equal Employment Opportunity Policy its commitment to honor the legal requirements of the federal Americans with Disabilities Act and California's Fair Employment and Housing Act of affording "reasonable accommodations" to applicants and employees, the City's policies do not clearly indicate a commitment to ensure equal employment opportunities to the disabled through its hiring practices. The CEOC suggests the policy of ensuring that citizens with disabilities are given an opportunity to participate in the mainstream of American society by engaging in meaningful employment is one that should be adopted by the City more clearly through the hiring of qualified individuals with disabilities who, with reasonable accommodations contemplated by the law, will be a valuable resource to the City as well as their respective communities.

B. Public Contracting.

The CEOC's role of monitoring the City's programs designed to afford equal opportunity to building contractors who would construct public improvements consumes, as it has historically, most of its attention. Without providing here a long historical account of the City's efforts to afford equal opportunity in public contracting, a current assessment of any progress being made under the City's now-existing programs might fairly begin with Mayor Jerry Sanders' remarks made at the August 1, 2007, meeting of the Rules Committee. On that occasion, the Mayor said

that the City “has done an abysmal job of implementing and maintaining equal opportunity contracting programs”, and he pledged to assume personal responsibility “to implement a program that will serve the needs of every community in San Diego.”

This report will, therefore, focus on the efforts of the City to implement programs which are designed to afford equal opportunities to those who would contract with the City, paying particular attention to any progress which has been made since August, 2007.

DISCUSSION

The Importance of Prompt and Regular Reporting

Data which reflects who has submitted bids for, and who have been awarded, public construction contracts is the primary indicator of whether any program designed to achieve equal opportunity is successful.

Undoubtedly, one of the reasons Mayor Sanders admitted the City’s failures relative to equal opportunity contracting programs is that in or about 2004 the City stopped analyzing and reporting on data relating to the City’s construction projects which could have been used to gauge the effectiveness of its Equal Opportunity Contracting Program. Since August 2007, City staff has attempted to reconstruct historical data in order to provide a more recent historical indication of whether the City’s programs were effective. That data provides stark evidence that the City did not, during that time period, achieve diversity in public contracting.

For the CEOC to provide a meaningful evaluation of the effectiveness of the City’s renewed commitment to equal opportunity in public contracting, it must receive regular data regarding what contracts have been awarded, their dollar amounts, who bid on them, and to whom they were awarded (including specifically the number of bids received from, and awards made to, women/minority/disabled veteran-owned firms). The information must be provided to the CEOC well in advance of when City staff intends to periodically report to the City Council or any of its committees, so that the CEOC can provide the evaluations expected of it, when they are expected.

Since August, 2007, the CEOC has requested that City staff report to it regularly regarding this information. Although staff has provided some of the requested information, as of the date of this report, a meaningful system and format through which this critical information is provided to the CEOC with predictable regularity has not been devised.

Yet, from the data which has been provided, racial and gender diversity among the construction contractors engaged by the City has not been attained and little or no progress in that regard has been achieved.

The Need for a Current Disparity Study

Only two percent of “certified firms” (those owned by women, minorities or disabled veterans) participated in construction contracts awarded by the City under its “race neutral” standards during the July, 2008 through December, 2008 time period.

Representatives of the minority community who have appeared before the CEOC argue that such disappointingly scant participation is a function of the City’s continuing “abysmal” implementation of programs designed to encourage a diverse cross-section of City contractors, such as its SCOPe program. On the other hand, representatives of the San Diego Chapter of the Association of General Contractors argue that women, minority or disabled-veteran owned construction firms are not participating in public construction because an insufficient number, if any, of such firms submit bids to be awarded such work. They suggest such firms may not even exist. They call for “an availability study” to be conducted.

It has been over 15 years since the City last commissioned a disparity study to analyze the extent to which minority and/or women owned business enterprises (MBE/WBE) were afforded equal contracting opportunities in the San Diego construction industry and by the City. The conclusion of that report was that discrimination did, in fact, exist in the San Diego construction industry, and that the City was at least a passive participant in that discrimination.

As the San Diego City Attorney’s Memorandum (MS59) of March 28, 2008, concluded, “governmental agencies have an affirmative obligation to remedy the ongoing effects of intentional discrimination within their jurisdictions.” With this obligation in mind, the CEOC recommends the City’s commission of a current disparity study to ascertain whether non-participation in City contracting by firms owned by women and people of color is, today, a function of industry-wide discrimination and whether the City may be fairly criticized as being a passive participant in any such discrimination. The results of such a study will give the City the information it sorely needs to attempt to determine the reasons for such scant participation in government contracting by such firms and to fashion more effective programs to remedy any discriminatory conduct reported.

Depending on the California Supreme Court’s determination of the issues now pending before it in the *Coral Construction, Inc. v. City and County of San Francisco* case, the results of such a disparity study will also reveal whether the City should or must implement race-conscious participation goals in public works contracts.

The Subcontracting Outreach Program (SCOPe)

The City’s SCOPe program, applicable to City construction projects in excess of \$100,000 is intended to achieve a diverse cross-section of subcontractors by encouraging prime contractors to conduct race/gender neutral outreach efforts. It sets mandatory subcontractor participation goals, and advisory participation levels for Disadvantaged Business Enterprises (“DBE’s”) and Disabled Veteran Business Enterprises (“DVBE’s”).

The SCOPE Program has been in effect since 2001. Whether a function of poor City implementation or faulty design, the program has not produced a diverse cross-section of subcontractor participants. In an effort to improve its effectiveness, the City has recently revised its SCOPE program by adopting the recommendations of consultant Franklin Lee.

The revised SCOPE program has not, yet, been fully implemented. The delay appears to be attributable to staff limitations combined with the City's need to acquire and implement computer software necessary to the outreach efforts contemplated by the revised SCOPE Program. Without the software, prime contractors remain obligated to conduct and report on its outreach efforts as they did before the recent changes.

The bottom line, however, is that since the Mayor's 2007 pledge to implement and maintain the City's programs, the SCOPE Program has not, yet, been effective in increasing DBE and/or DVBE participation in City construction contracts.

The Minor Construction Program ("MCP")

The MCP, enacted in 2002, permits "minor public works", i.e., construction contracts valued at \$250,000 and under, to be bid out to small and emerging businesses who are participants of the program. In 2008, the dollar value of contracts let by the City to MCP participants was quite low. In 2009, twenty-two (22) MCP contracts have been identified.

The CEOC recommends City attention to methods by which a greater dollar volume of City work is completed by MCP participants, such as through the unbundling of larger contracts so that some of their components can be eligible for completion by MCP participants.

The Mentor Protégé Program

Construction: The total number of graduates of this program are five (5). The CEOC will ask City staff to provide a report to it on the number of City contracts for which graduates of the program have submitted bids, the number of City contracts awarded to any of such graduates, the number of such contracts completed and the total dollar value of such contracts. The CEOC will include an assessment of the effectiveness of the program in a future report. The CEOC commends all mentors who have participated in this program.

Consulting: The CEOC is pleased to note the City's participation in the Architectural and Engineering Mentor Protégé Program, and will report on the effectiveness of that program in a future report.

Community Development Block Grant Analysis

The City allocates a portion of Community Development Block Grant (CDBG) funds to various organizations, consistent with the goals of that program to assist low and moderate income persons. The CEOC has asked for, and will receive, a presentation on the City's allocation of CDBG funds at its July, 2009, meeting. The CEOC is interested in assessing the extent to which such grants have been, or might be, effective in increasing diversity in public contracting.

The Contractor/Vendor Registration System

The creation and maintenance of a contractor/vendor computer database by which those who would contract with the City can identify themselves by such registration, and by which they can indicate whether they are certified M/WBE or DVBE firms and additional valuable information about them is an important feature of the outreach efforts designed to achieve a diverse cross-section of building contractors, suppliers and consultants engaged by the City. By design, this database will be made accessible to prime contractors obliged to complete the subcontractor outreach obligations of the SCOPE program, and the computer software associated with the database will enable prime contractors to complete their outreach efforts through the City's program.

As noted above, the City's acquisition and implementation of off-the-shelf computer software needed to make this component of the City's SCOPE Program fully operational, has been delayed. The CEOC understands it should be fully operational by September, 2009, and looks forward to evaluating its effectiveness in the future.

Outreach Activities

To achieve diversity in public contracting which has been lacking historically, the City must continue and improve upon its efforts to advise all contractors, including DBE/SWBE/SMBE and DVBE firms, of the availability, type and dollar amounts of City contracts.

Presently, construction projects which are completed with City funds are subject to the race neutral outreach limitations imposed by Proposition 209, passed by California voters in 1996. However, certain contracts awarded by the City are for the expenditure of federal funds, and those contracts include federally-mandated race and gender conscious participation goals. Therefore, City employees who staff the Equal Opportunity Contracting Department must be trained in the current requirements of contracts awarded pursuant to any such program. The City should also, as a part of its outreach efforts, urge all firms eligible to be certified as DBE/SWBE/SMBE and/or DVBE firms to obtain such certifications in light of the opportunities available to them when contracts subject to federal program requirements are awarded.

Proposed Small or Local Business Preference Program

The City has also recently obtained the recommendation of consultant Franklin Lee that it adopt a local small business preference program, applicable to construction contracts as well as those for goods, services and consulting.

The CEOC has been reviewing this proposed program, and believes that a program which requires the City to contract with local small businesses for a significant part of its needs would be beneficial. Local small business owners are a valuable feature of the local economy. Money spent on such contracts would be used to pay wages to local employees and generate profits for local business owner, which would have the effect of stimulating local business and local tax

revenue. The provision of subcontracting opportunities to small local businesses may also result in the achievement of greater diversity on a race neutral basis.

The CEOC's review of this proposed program is not, yet, complete. It has been asked to, and will later provide more specific feedback regarding the proposed program and its features.

Compliance-Related Activities

For equal opportunity activities to be effective, parties on both sides of any affected contract, i.e., both City staff and contractors, need to devote the resources to compliance with the applicable program requirements. The City has been providing, and continues to provide, opportunities for contractors to be trained on how to comply with equal opportunity programs. The CEOC also recommends that City staff be trained regarding the preparation of certified payroll forms, because many of the construction contracts to be let by the City in the foreseeable future will involve the expenditure of federal stimulus funds, subject to federal participation requirements.

Structure and Staffing

Whether it is a function of the City's Budget Process Re-engineering process begun in 2006 or whether the problem is one which existed before then, the City's renewed commitment to the achievement of equal opportunity in all aspects of public contracting, including consulting, purchasing and construction contracts, is a commitment which must be included in the workings of all affected City departments. It has appeared to the CEOC that the implementation and supervision of the City's equal opportunity programs and policies is fractured among different departments, with uncertain lines of supervision, authority and reporting. This structural deficiency also makes it more difficult for relevant information to be assembled and supplied to the CEOC.

The CEOC recommends that the City re-assess the structure of its affected departments with a specific goal of improving the effectiveness of the City's equal opportunity programs.

As it has also become apparent, especially over the last two or three years, it is critical to the effectiveness of the City's equal opportunity programs for the Equal Opportunity Contracting Department to be fully staffed with competent, dedicated personnel. The City's past neglect of the staffing requirements of its Equal Opportunity Contracting office was inexcusable.


The CEOC is, therefore, pleased that the City has exhibited its renewed attention to these important issues by hiring and maintaining a sufficient number of employees to implement and maintain its equal opportunity contracting programs. The City must remain diligent with respect to the employment of a sufficient number of properly trained personnel in connection with its effort to achieve equal opportunity.


CONCLUSION

The CEOC will continue to monitor and report on the efforts and policies of the City related to equal opportunity in contracting. While the City appears to be moving toward the full implementation of its programs designed to afford equal opportunity, it has not, yet, effectively done so. The challenges are significant and important, and the City should not falter in its resolve to achieve appropriate diversity among those with whom it contracts.

The CEOC will continue to address issues relating to equal opportunity in employment, as well.

Respectfully submitted,


Ms. Rebecca Llewellyn, Chair
Citizens' Equal Opportunity Commission


Dr. Shirley Weber, Vice-Chair
Citizens' Equal Opportunity Commission