



THE CITY OF SAN DIEGO

CITIZENS' EQUAL OPPORTUNITY COMMISSION

SPECIAL MEETING

MINUTES

Wednesday, January 18, 2012

6:00 p.m. – 8:00 p.m.

At

City of San Diego – City Hall

202 C Street

San Diego, CA 92101

12th floor - Conference Room 12B

COMMISSIONERS PRESENT:

Brad Barnum

Ron T. Cho

John Cloud

Stampp Corbin, Vice Chair

Montes Jones

Gregg Torwick

Laura Warner

Dr. Shirley Weber, Chair

COMMISSIONERS ABSENT

Juan Gallegos

Jay M. Montenegro

MAYOR'S STAFF & Guests:

Debra Fischle-Faulk, Administration Department Director

Henry Foster, Equal Opportunity Contracting Program Manager

Denise Sandoval, Administration Department Executive Secretary

James Nagelvoort, Interim Assistant Director Engineering and Capital Projects, City Engineer

Roz Winstead, Public Speaker

Tom Lemmon, Public Speaker

Christie Hill, Center for Policy Initiatives, Public Speaker

Jennifer Badgley, IBEW, Public Speaker

Jeff Sturak, Office of the Independent Budget Analyst

Pam Ison, 3rd Council District

Almis Udrys, Mayor's Office

Updated/Changes to CIP streamlining recommendations to Budget and Finance Committee
(See attached power point presentation)

DISCUSSION:

Commissioner Barnum requested staff conduct additional stakeholder meetings and inquired about whether or not it made sense to push CEOC recommendations to Budget & Finance on the 25th without the additional stakeholder meetings.

Staff explained the Committee gave direction to return with an update January 25th which included results of stakeholder feedback. Commissioner Corbin asked if when coming up with the concepts that were presented by staff whether or not stakeholders were consulted.

Staff agreed with Commissioner Corbin that additional stakeholder input is necessary. Staff indicated that a lot of work was put into preparing the recommendations and is willing to do what's necessary. Commissioner Corbin asked what the expectation is for the January 25th meeting.

Staff responded that municipal code changes are required to implement the concepts presented and take the changes to Council for approval.

Commissioner Corbin expressed concern that staff will be presenting something for consideration and that we don't know what the outcome will be but, could be approved and be done.

Staff explained that the item still must be heard by Council after Committee and the Committee can direct staff to hold meetings prior to the Council hearing the item.

Commissioner Corbin requested staff return to the Committee and advise them that a presentation was made to the CEOC, public comment was taken on the issues presented and the Commission recommends staff does not present.

Staff expressed that he would not state that but that he did recommend that the CEOC submit what they recommend to the Budget & Finance Committee.

Commissioner Cloud agreed that he doesn't believe that Council will pass this right away.

Commissioner Warner is interested in seeing how the change in the process will maintain or improve the diversity. She understands that there are benefits to the process being streamlined for everyone but, if diversity will be compromised Commission can't support it

Commissioner Cloud commented that the Commissions' viewpoint is that it could retard the progress that the city has made. The MACC is still a concern.

Commissioner Jones added that he supports meeting with stakeholders to provide input on how they see this program working for them.

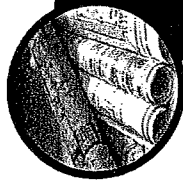
Capital Improvements Program Streamlining and Possible Impacts to Equal Opportunity Contracting



Citizen's Equal Opportunity Commission

January 18, 2012

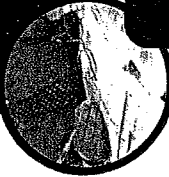
Understanding the CIP Contract Delivery Methods/Programs



Design-Bid-Build



Design-Build (MACC)



General Requirements Contracting (GRC)



Emergency Contracting



Construction Manager at Risk (CMAR)

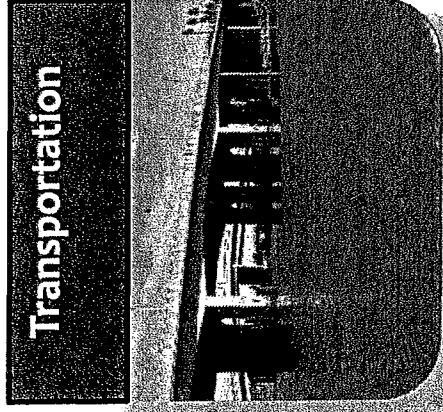
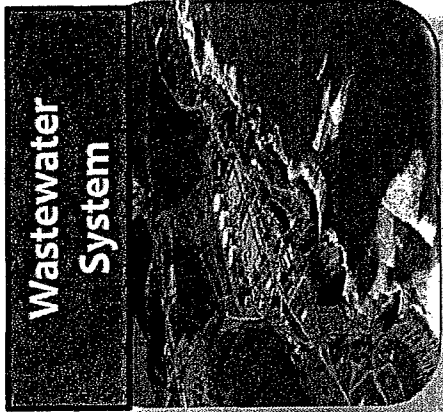
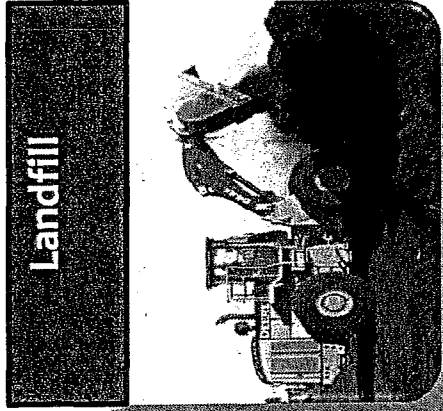
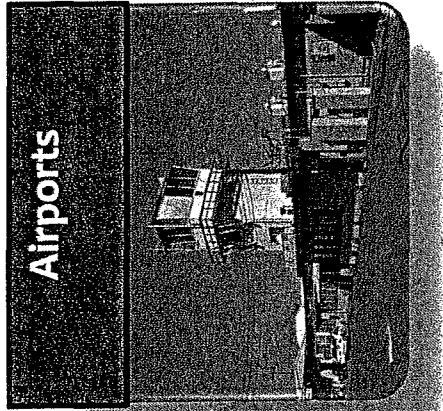
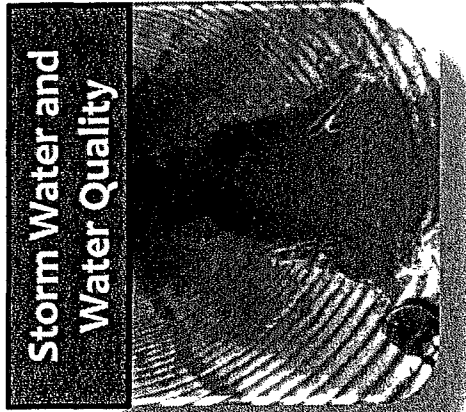


Sole Source

Small Local Business Enterprise



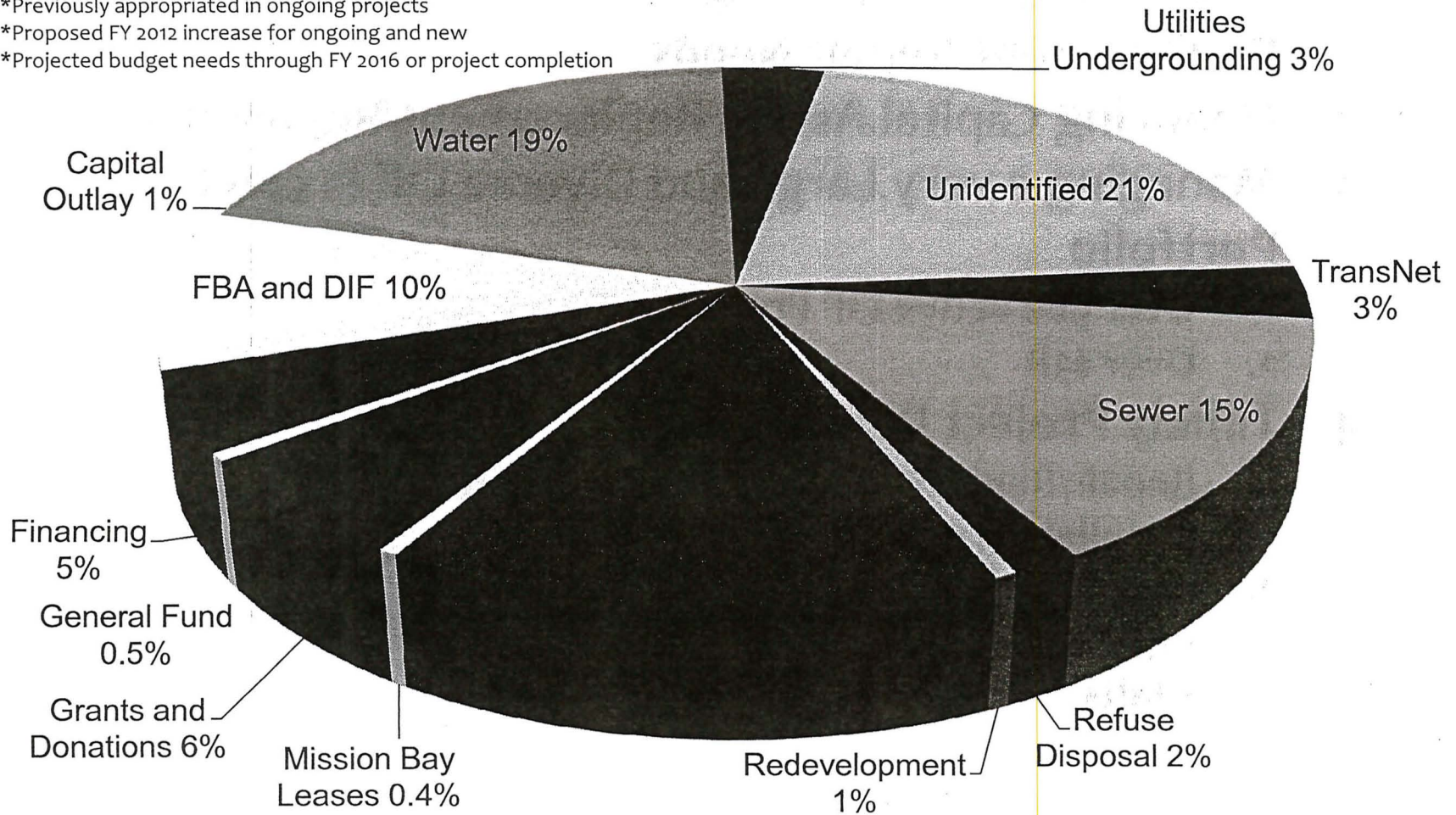
Understanding the CIP – Project Types



Understanding the Capital Improvements Program

Multi-Year CIP by Funding Source \$7.3 Billion*

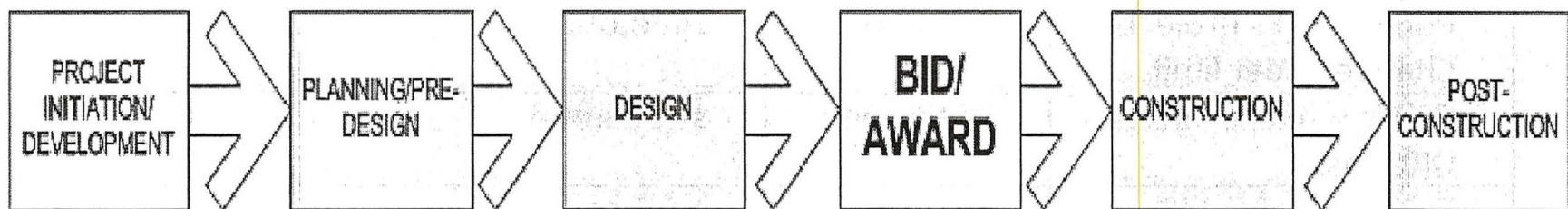
- *Previously appropriated in ongoing projects
- *Proposed FY 2012 increase for ongoing and new
- *Projected budget needs through FY 2016 or project completion



Streamlining CIP Delivery

Contracting Successes - What's being done right!

- In the first quarter of FY12 reduced contracts in “bid-to-award” queue from 62 to 24
- In the first quarter reduced average processing time from 120 days to 60 days
- In the first half of FY12 awarded 93 contracts (42 under \$500K)



CIP Streamlining Recommendations given to Budget and Finance Committee

- 3. Modify the Municipal Code to allow for Multiple Award Construction Contracts (MACC).**
- 4. Modify the Land Development Code as it relates to Site Development Permits for CIP projects.**
- 5. Reconcile Council Policies 600-24 and 600-33 as they relate to park projects.**
- 6. Authorize automatic transfers of project savings at project completion to other projects.**

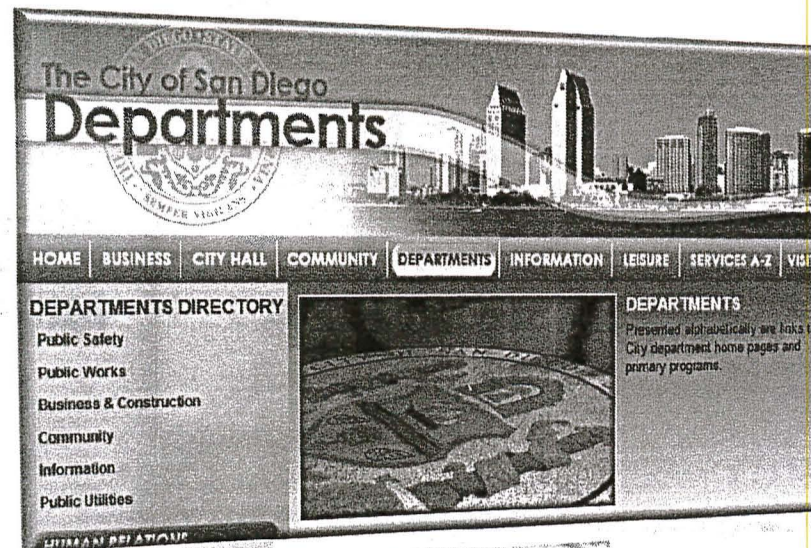


Update/Changes to CIP Streamlining Recommendations

- **Mayor's Contracting Authority:** CAO has drafted modifications to Municipal Code to increase the Mayor's authority (from \$1M to \$30M) to award Public Works Contracts which have already been approved by the Council through annual CIP budget process.
- **Adjust current approval thresholds:** The CAO has drafted modifications to the Municipal Code to make some additional procurement adjustments; again to keep up with or exceed the rate of inflation.
 - CIP related consultants agreements: \$1M
 - Change Order limit: \$500K; but, not to exceed the total amount authorized for the project by ordinance or resolution.
 - Job Order Contracting (JOC)Tasks: \$1M


CIP Transparency

- **Online CIP Information – City Website**
 - **Project Data: Scope, Schedule, Financing, Contracting, EOC Goals, and Location**
 - **Data Organized by: Council District, Fund Sources, Asset Type, and over all EOC (SLBE-ELBE) results**
 - **Available to Council, Stakeholder Groups, and Public**



CIP Transparency, Cont.

Online CIP Information – City Website



Manning Cyn Swr and Wtr Replacement (W)

Close

Print Page

- Airport
- Bicycles
- Bridges
- Drinking & Flood Control Facilities
- Highways
- Parks & Recreation Centers
- Police, Fire, & Emergency Services
- Street Improvements
- Storm Drain & Trench Systems
- Utilities Infrastructure
- Water & Sewer Facilities
- Water & Sewer Systems

General Information

Project ID	B00095
Project Description	Replacement of approx. 0.27 miles of CI water pipes within the Linda Vista community. Bubble project
Senior Civil Engineer	Mark Nassar
Project Manager	Catherine Dungca
Resident Engineer	
Current Phase	Planning
Data Date	11/1/2011

Construction Schedule


Notice to Proceed	9/30/2014
Notice of Completion	10/19/2015


Cost

Total Project Cost	\$1,053,278
Total Construction Cost	\$688,000

"Working together to engineer a better tomorrow"

For additional information, or questions about this project please call our public information line at (619) 533-4207, or visit us online at www.sandiego.gov/engineering-cip.





Mission Bay Sewage Interceptor System Project

Background

The project will repair and improve the "low flow diversion" system around Mission Bay. This system directs inflow from the area's stormwater collection into the sanitary sewer system for treatment, rather than allowing it to flow into the Bay at low tide. The diversion system is designed to capture the "low flow" runoff moving toward the Bay in storm seasons. This runoff typically carries high levels of urban pollutants such as bacteria, pesticides, herbicides, and metals that are particularly harmful to water life. The project aims to schedule for repair and improvement work where needed because of their need for attention due to high water currents, and dated instrumentation and control equipment, and to gain access for maintenance personnel.

Project Overview

The project will replace gate valves, hatch covers, vaults, and miscellaneous equipment at 11 sites around Mission Bay. Any concrete, asphalt, or landscaping affected by the project work will also be replaced.

All work will be done below ground or flush with the pavement. Disruptions to pedestrians and vehicle traffic will vary from minimal impact to temporary lane closures depending on the site.

Construction Schedule

Construction is scheduled to begin after Labor Day 2016 and will continue until March 2017. Construction at each site will last no more than a few weeks. The order in which the sites are constructed will be determined by the contractor based on perform the work.

Cost


Construction costs for this project are estimated at \$2,063,280.

Additional Information

Additional information about this and other important infrastructure projects can be found online at www.sandiego.gov/engineering-cip, or by calling the public information line at (619) 533-4207.

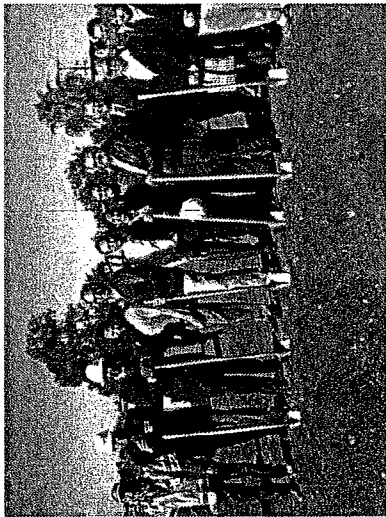
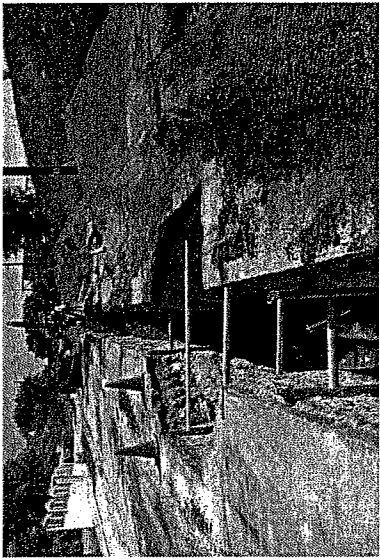
"Working together to engineer a better tomorrow"

If you have any questions about this project or the Engineering & Construction Department, please call our Public Information Line at (619) 533-4207 or visit us online at www.sandiego.gov/engineering-cip.

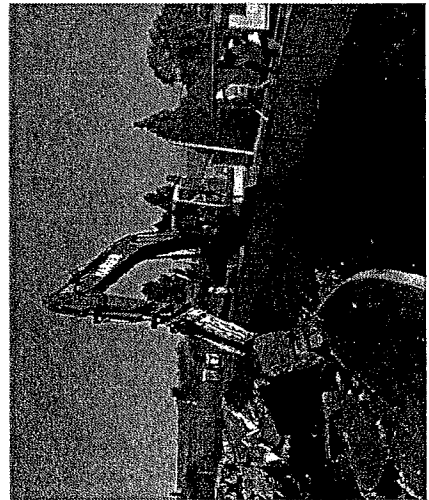
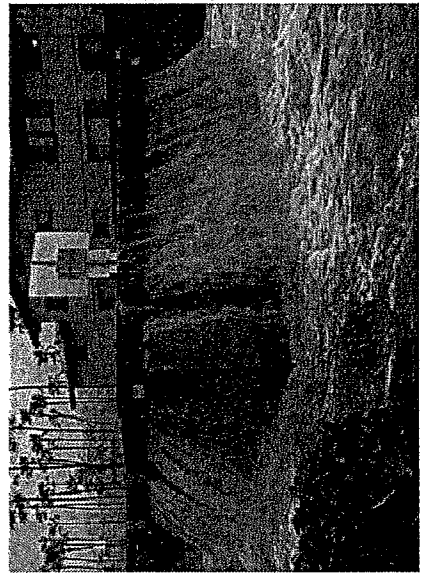
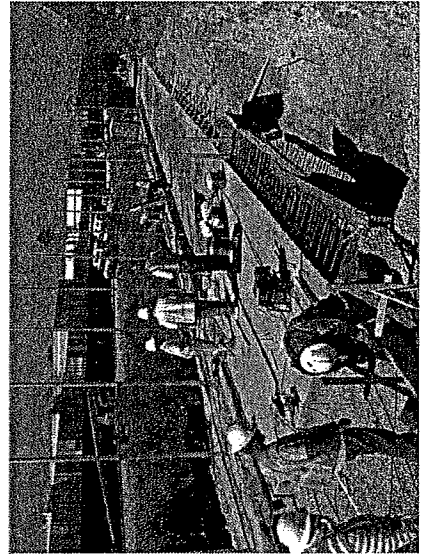


CIP Transparency, Cont.

- **Council Notification of CIP Project Awards**
 - Consultant & Construction Contract Awards
 - EOC Goals & Results
 - Construction Change Orders
 - More???
- **Semi-Annual State of the CIP Presentations to City Council and/or Council Committee**
- **Semi-Annual Presentations to other Stakeholder Group (CEOC???)**



FEEDBACK and Q & A



CIP Streamlining Recommendations - Equal Opportunity Contracting

Recommendations	EOCP Comments/Concerns	Other Comments	Reporting
<p><i>MACC is a Design Build Public Works Construction Contract. It is a contract awarded as a result of a single solicitation, which resulted in award to multiple Contractors. Each contract is based on an indefinite delivery indefinite quantity (IDIQ) contract with no pre-established fixed contract prices. The actual amount of work to be performed and the time of such performance will be determined by the City's properly authorized representative, who will issue written Task Orders to the Contractor. Award of Task Orders will be on a firm fixed price basis.</i></p>	<p>EOCP process to remain in place: Approval of City, State or Federal EOC requirements (Goals); Bid Evaluation for City, State or Federal EOC Compliance once bids are received (Technical & Price). EOCP to remain as Signing Authority for PA2625 (Authorizing Document for contract execution)</p>	<p>EOCP to participate in MACC development and implementation to ensure EOC is included in MACC delivery method.</p>	<p>Public Works to provide monthly reports to CEOC Commission and post contract awards on website</p>

Tom Lemmon representing the San Diego Building Trades, I am here to ask that the CEOC recommends to the Budget Committee next Wednesday that they create a "Public Works Contracting Stakeholders Taskforce" this taskforce should include contractors, community members, minority business, labor, IBA and the Public Works city staff.

This taskforce should be directed to examine the current process of city contracting and identify ways to improve performance, save taxpayers' dollars, meet minority participation goals, and guarantee hiring a local workforce.

It's clear that the proposal before you will only benefit a few.....at the expense of the community.

I would hope that you demand a comprehensive proposal that includes ALL STAKEHOLDERS.

While I was not at November's budget meeting, I did see it online and was offended to hear testimony from one of your own commissioners (Brad Barnum) stating that this proposal went through a "open process" clearly this could not be further from the truth as the community was not involved.

**Testimony before
THE CITY OF SAN DIEGO CITIZENS' EQUAL OPPORTUNITY COMMISSION**

January 18, 2012

Good evening. My name is **Christie Hill**, I am the Senior Legal and Policy Analyst with the Center on Policy Initiatives. We would like to offer comments about the proposal to streamline the Capital Improvements Program (CIP).

While we are glad that City staff is looking for ways to improve CIP and make it more effective for the community we have serious reservations about some aspects of the streamlining proposal. We are concerned about the impact the recommendations would have on oversight, accountability, transparency and diversity as well as the quality of jobs that would result because of these changes.

The City is proposing to change the way City Council is involved in the approval of CIP contracts by only having Council approve the initial CIP budget and raising thresholds for when Council will be involved in the award of the actual contract.

We understand the concerns around efficiency but believe Council's approval serves as an important check in who is awarded the contract. Private contractors are not subject to public record laws and the public deserves to have the ability to participate in the process beyond when the money is approved for the contract.

We also have concerns over the recommendation to use a Multiple Award Construction Contract (MACC) program. Given the city's struggle to increase diversity, this proposal lacks detail as to how it preserves the City's ability to meet diversity goals with a transparent and accountable process. More investigation should be done about the potential effect this would have on diversity efforts. Furthermore, the City already struggles to provide proper oversight to contractors and clear guidelines about oversight and transparency need to be provided.

We should not rush into implementing the recommendations without ensuring that this will not create more harm. More vetting is needed and an equal opportunity strategy needs to be outlined. Stakeholders in the community need to be given the opportunity to participate and weigh in on this process. This meeting was not even noticed online as of 10:30 this morning. Decisions should not be made behind closed doors.

We believe that the committee should get answers to these questions before allowing power to be concentrated in the hands of a few.

Thank you.

Good Evening Commissioners,

I am Jennifer Badgley with IBEW Local 569 representing approximately 2500 electrical workers who work for more than 200 signatory electrical contractors. I am here tonight to comment on a proposal to streamline contracting that local workers have never seen and have not been a part of drafting. I cannot help but think this significant omission must be deliberate. I also think this is unfortunate given the cloud hanging over our region with the construction contracting corruption allegations ongoing at Sweetwater.

I have three overarching concerns tonight:

First and foremost: What does this proposal that we have not seen mean for local workers?

What needs to be done to measure the impacts of this contracting proposal on local workers? What crafts will be most impacted? How will it impact journey-level workers, apprentices, and technicians?

Any security expert will tell you a key to fighting corruption is the professionalization of the workforce. Contracting programs that include clear guidelines and requirements for professional workers and registered apprentices create clear expectations for decent working conditions, a safe environment, and contract performance results for taxpayers, while decreasing incentives for corruption.

Greening our city is our future. We have to lower the greenhouse gas emissions and make our city facilities and infrastructure smarter and more efficient. In order to have skilled journey level electricians to work on these green jobs we need to ensure that local workers get to go to work as apprentices. Right now our apprenticeship looks a lot like our population. By next semester, a majority of our program participants will be minority. What does this proposal mean for their working future? What does it mean for young people of color whose parents were too often left out of the fossil-fuel economy and who we should all be working to ensure get access to good, lifelong careers in green electrical construction?

We also want to know how this will impact veterans. IBEW 569 is a union with many veterans and our leadership strongly believes the tens of thousands of men and women who are going to be transitioning into our communities as civilians deserve consideration in every single contracting proposal.

My Second concern is: Given the lack of transparency in developing this proposal what kind of questions have been raised and addressed about minority contracting?

For example:

We work for several local low-voltage signatory employers that are owned by minorities disabled vets. Much low voltage equipment is proprietary. What will happen, if, for example, a 5-year contract is let with proprietary equipment that not one minority firm sells? Will those firms and the local workers and apprentices they employ just be excluded?

And my third concern is: With all due respect, doesn't Brad Barnum, who is termed-out on this committee, and who has been working with the Mayor's office on this proposal as a paid lobbyist for the AGC, have conflict of interest in deliberating this issue on the EOC?

At this time IBEW 569 recommends that EOC advise that the implementation of a new contracting scheme be slowed to allow time ensure that participation by a diverse local workforce and small, minority, and disadvantaged firms.

Other questions I am thinking about:

How will the competitor pool be updated throughout the contract time frame?

Who will determine the expertise needed for a contract and how the pool of contractors meet those needs?

There are vast differences between the resources of large general contractors that make the decisions at the AGC and small, minority and disadvantaged specialty contractors. How will increased cost of competition and decreased market share impact these contractors and their workforces?

How will contractor complaints be reviewed? Will there be an ombudsman? Who will that be?

Will there be a set and enforceable process to scrutinize program elements including minority contracting and workforce diversity?

Will the size of contracts permit businesses to develop capacity?

Will there be different subcontracting requirements for differently priced contracts? For example, will more expensive contracts require a prime contract to provide more subcontracting opportunities to small, minority and disadvantaged local firms?

How will general contractors' minority participation be measured? Do general contractors get to count subcontractors toward their own minority participation goals?

Does there need to be concomitant policy developed to implement, monitor and enforce provisions of the new contracting scheme that affect minority contracting and workforce diversity?

There will continue to be federal and state money available for energy efficiency programs. How will these be incorporated into future CIP contractors? Will there be additional resources allocated to such things as lending support or other opportunities for small contractors? Will the City Council have any say in this?

What is being done to enhance small and minority firms' ability to compete in San Diego contracting and subcontracting? How will this need to change? Shouldn't this be studied before this goes forward?

Federal government has various set-asides. Given the restraints on the State that Federal government does not have, what guidance is being used to assess the best way for small and minority firms to participate in multiple award contracts? Will, for example, small minority firms only compete with other small minority firms? Will some contracts be "set-aside" for minority and small firms? Under what circumstances? What steps will be taken to increase small and minority firm utilization? How does the City Charter, State, and Federal law frame this?

At what point would a small business size be determined for a multiple award contract? –At the time of submission? When a quotation for a specific order is submitted? Some such combination? What affect would requiring size determinations at these phases have on the procurement process for multiple award contracts?

What will the role of the City be in facilitating opportunities for small and minority contractors that is consistent with contracting regulations? Will there be a staff person that is responsible for determining whether a general contractor used a particular subcontractor in creating a bid or a proposal? Who will be responsible for determining the subcontractor has performed to satisfaction? How will the general contractor be held accountable to the city? How will the information that is reported be collected and used? Who do minority and small firms report to if a general contractor fails to utilize a subcontractor or does not pay a subcontractor. What will the consequences be for a general contractor that is late or reducing payment to a small or minority firm? These can be critical questions to the financial stability of a small business.

How will Multiple Award Contracting interact with mentor-protégé programs? What challenges arise?

Are there specific areas of contracting that need specific action to develop or retain small and minority firms?

How will the new contracting scheme interact with contracting certification and safety requirements? How will they be updated when there are changes?

There are many start-ups and very small firms in electrical contracting. Will there be subcontracting requirements for major firms to follow to allow these contractors a shot in San Diego contracting

Jennifer Badgley

Organizer / Political Director

CIP STREAMLINING POSSIBLE IMPACTS TO EOC

I attended the Dec. 7 presentation by Public Works which included a PPT presentation.

- o I noted the streamlining proposal is a "hangover" from 2007's Business Process Re-engineering effort that included the dismantling of EOC by eliminating of 11 staff positions

The Public Works presentation overview identified 2 topics related to EOC:

1. Ensure EOC continues to be a part of the pre-award evaluation process
2. Ensure EOC issues are resolved prior to award

The presentation however, was not sufficiently detailed for anyone to know what specific steps will be taken, by whom and when to address EO Program objectives? In addition, should we have confidence in the current pre-award evaluation process? Do we know how EOC issues are currently being resolved; and are the department's resources sufficient to address the changes proposed as a result of streamlining?

More text was devoted to "post-award information -- "...when the pony is out of the corral." Monthly summaries and reports to the Mayor & Council are proposed, but if past performance is an indicator ---and it too often is-- the small minority and disadvantaged business sector needs to be leery. No outreach was conducted to the broader consultant and contracting community -- but just to the *usual suspects* -- represented today by a termed out, AGC lobbyist and an AGC/EGCA member who is also a protégé in the ill-conceived City of San Diego /AGC mentor/protégé program.

The streamlining proposal's

#1 Recommendation is the: One time approval of the CIP w/no further council review

- This recommendation undermines **an important oversight role by the Council**. The results of failed oversight can be seen in the City's fiscal management nightmare, CDBG audit, Purchasing & Contracting debacle -- and in current unmet redevelopment obligations.

#2 Recommendation = Says ADJUST -- but means INCREASE existing thresholds and add a new one

- All the proposed increases are significant, especially for consultant agreements. The increase for Public Works projects could be any amount. Change order limits are more than doubled, and General Requirement Contracts or Job Order Contract s are increased to \$1 million.
- It's important to ask, what EEO data will be available for review in the "streamlined world " and what subcontracting reporting requirements will exist given the mix of funding sources being used.
- Why isn't some consideration being given local hiring and other important economic equity initiatives while we're revamping processes and contracting procedures for

millions of dollars in construction and consultant contracts? It appears City staff, the AGC and EGCA have deliberated and it's *rubber stamp time* for the rest of us.

#3 Recommendation = Multiple Award Construction Contracts

MACCs , as I understand them, limit competition, and can function as a form of contract bundling. Both undermine opportunities for small firms & M/W/D/DVBEs.

I would ask staff to clarify why MACC s are listed with D/B as if they were the same; but MACCs require a change in the Muni Code. Is this a giant typo?? I hope the Commission will request information about the distinctions between the D/B delivery method and Multiple Award Construction Contracts. They are not the same according to an article on "Public Sector Multiple-Award Construction Contracts" published in *The Military Engineer*. I would just note that MACC's apparently are routinely used by the feds, but they **have mandatory goals**. These goals are routinely met by some of the same contractors that failed to make "good faith" efforts on City contracts for decades.

http://themilitaryengineer.com/index.php?option=com_content&task=view&id=58

I urge the commission to ask about the steps that must be taken **and the anticipated timeline** to modify the Land Development Code as it relates to Site Development Permits; and to reconcile 2 Council Policies related to park projects.

We hope that during this timeframe, whatever it is, a comprehensive EO plan is outlined to protect the gains made only in construction procurements in the last year. Consultants did not fare as well and the awards to vendors, until quite recently, had been a 5-year mystery.

The lack of transparency and oversight the CIP streamlining proposal invites warrants thoughtful review by the CEOC , impacted stakeholders and the City Council. This will require a delay in moving the streamlining proposal forward at warp speed. I urge the Commission to recommend a continuance to the Budget Committee to afford time for further review and deliberations, broader outreach and the development of a detailed EO-focused plan to address the streamlining proposal. The plan should also address questions raised this evening. Among them, requirements associated with various funding sources, data collection and reporting given the City's various IT systems issues; staffing implications, regulatory/legal issues (permitting & parks), etc.

On a final note, until there is a paradigm shift in how the City conducts its business, economic inequality will continue to exist and the City will continue to be exposed to litigation- or worse. Perhaps more importantly, citizens and business owners will grow more skeptical of City government and the rancid intent it continues to demonstrate during closed door, invitation only, "good ole boy," *pay to play* dealings, whether on the golf course -- or the 10th and 11th floors of City Hall.

Thank you.

Bid and Award Process

