



**THE CITY OF SAN DIEGO**

**CITIZENS' EQUAL OPPORTUNITY COMMISSION**

**MINUTES**

Wednesday, February 1, 2012

6:00 p.m. – 8:00 p.m.

At

City of San Diego – City Hall

202 C Street

San Diego, CA 92101

12<sup>th</sup> floor Committee Room

**COMMISSIONERS PRESENT:**

**Brad Barnum**

**Monte Jones**

**Laura Warner**

**Jon Cloud**

**Gregg Torwick**

**Dr. Shirley Weber, Chair**

**COMMISSIONERS ABSENT**

**Stampp Corbin, Vice Chair**

**Juan Gallegos**

**Jay M. Montenegro**

**Ron T. Cho**

**MAYOR'S STAFF & Guests:**

Henry Foster, Equal Opportunity Contracting Program Manager

Denise Sandoval, Administration Department Executive Secretary

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

Carmen Vann, Project Executive, Turner Construction

Shawn Rosenberger, Vice President, General Manager, Turner Construction

Wendell Stemley, CEO, Black IPO, Inc.

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**CALL TO ORDER:** The meeting was called to order at 6:15 p.m. by Dr. Shirley Weber, Chair. All Commissioners introduced themselves for the record.

**MINUTES APPROVAL:** Agenda unanimously approved. Minutes from December 7, 2011 & January 18, 2012 Special Meeting approved unanimously.

**STAFF REPORT:** Henry Foster, EOC Program Manager

- Construction Statistics (6 month review – PRELIMINARY)
  - *Commissioner Barnum requested a list of the projects that make up the dollar figure (94million) presented at the beginning of his report.*
  - *Commissioner Barnum commented that in a recent Caltrans query of DBE's as of 12/31/11 there are 111 black certified firms able to service District 1, 46 of those firms have A or B license. Only 8 of those 46 firms are located in District 11. That may be why the percentage of dollars going to black firms is so low.*
  - *Staff responded that the report was based on the actual numbers and not the availability of firms. The firms may not be bidding on City jobs.*
  - *Chair Weber mentioned the need for a disparity study.*
  - *Commissioner Warner requested statistics on consultants and suppliers?*
  - *Staff advised that supplier statistics are supplied by Purchasing and Contracting Department. A new Department Director was recently hired. As soon as he is acclimated with his Department we will begin to have Supplier statistics presented. The Consultant statistics will be provided to the Commission shortly.*
  - *Commissioner Jones asked if the percentage for the African-American would remain the same as the last year.*
  - *Staff advised that the numbers would be close to last year's percentage.*
  - *Dr. Weber inquired about the increase in the percentage level of numbers.*
  - *Staff advised that the backlog of projects not awarded last year causes the numbers to be somewhat elevated. It should level off and the numbers will be close to what we had last year.*
  - *Commissioner Warner requested that a comparison chart be created to show the prior 6 months compared the current 6 month's figures.*
  - *Staff will provide a comparison chart*
  
- SLBE Program update – Application Breakdown
  - Good Faith Effort Requirements – Staff to provide proposed revisions to The Commission prior to implementation for feedback.
  
  - SLBE Program Improvements – Staff will provide proposed revisions to commission for feedback prior to presentation to Rules Committee and City Council.

**NON-AGENDA PUBLIC COMMENT:**

- *Wendell Stemley –*
  - *Commented on why minority contractors don't do business with the City.*
  - *There is not enough visibility of how the subcontractors are selected.*
  - *Small disadvantaged businesses are opting out of bidding because the City has not put a structure in place that allows you to see how you are competing in a given sub-trade.*
  - *Recommended that the Commission inform Council that transparency is needed on the outcome of competitions because small businesses don't have incentives to keep going through the process and not know the*

outcome.

**Action Items:**

- **Black IPO Construction and the San Diego New Central Library Project  
Agenda Public Comment**
  - *Carmen Vann, Project Executive, Turner Construction, San Diego New Central Library Project*
    - *Ms. Vann provided additional information regarding the issue raised by Mr. Stemley's letter.*
    - *Ms. Vann stated there was miscommunication regarding the matrix document.*
    - *Ms. Vann stated that up until recently they felt that they had satisfied Mr. Stemley.*
  - *Shawn Rosenberger, General Manager, Turner Construction*
    - *Mr. Rosenberger echoed Ms. Vann's statement.*
    - *Mr. Rosenberger stated that the document Mr. Stemley is referred to maybe isn't as clear as it could be but, Morley did not choose Black IPO to fulfill their 30% commitment and minimum goal.*
    - *Mr. Rosenberger also stated that the matrix document was taken out of context.*
  - *Wendell Stemley, CEO Black IPO*
    - *Mr. Stemley stated that he was listed on the matrix document presented and voted on by the City Council.*
    - *Mr. Stemley feels that if there was a mis-communication it needed to be taken up with the City Council and the City Attorney.*
  - *Staff informed the Commission that when this issue was brought to the attention of the City, they reviewed all issues and the process that took place. The City's position is that when the GMP was presented for approval to City Council the matrix document that Turner Construction is referring to was in the package. It did indicate a participation level for Black IPO at approximately \$4 million. That is what City Council voted on and approved. The City's position regarding Morley was that the City contracted with Turner Construction. The City's position is that Turner Construction does need to rectify the situation.*

*Dr. Weber stated that this is the perception of and the reason that there are problems with people doing business with the City.*

*Ms. Vann clarified Turner Construction has a Consultant that does extensive community outreach and has high numbers across the Country on using underutilized businesses.*

*Ms. Vann also commented that their next step is to go to Council offices and to discuss the document and clarify exactly what that document was. To make it clear that Turner Construction has a continued commitment to diversity and this community.*

Commissioner Cloud asked if there was an actual \$4 million commitment to Black IPO?

Mr. Rosenberger advised No, there wasn't.

Commissioner Jones asked for clarification regarding the document that was approved by the Council why was there a need to list contractors? Was it needed for Council approval?

Ms. Vann answered that the document was created to show their strategy. This document had a cover letter that they could not name 2nd tier subs.

Commissioner Jones **requested the ethnic breakdown** of the 18.7%?

Ms. Vann said that she could not give the breakdown but could **provide the breakdown to the Commission.**

Staff added that the reason that this issue was such a big discussion was because in order for this project to receive the final vote by City Council this was the major point of contention...this is why it is such a volatile matter. The City understood that the representations in the GMP were going to be the levels at which that project would move forward. There have been deviations to the matrix, it is unfortunate that we are talking about this after the fact...but we have awarded and started on phase 2. We need to look at the enforcement standards and improving those so that we mitigate things like this.

Commissioner Warner asked why Phase 2 wasn't brought to the Commission before it was awarded and also mentioned that it was very difficult to discuss the Black IPO subject without knowing what documents went to Council.

Commissioner Jones asked why Turner Construction was going back to City Council with this issue?

Ms. Vann answered that it was important to clarify their position to Council because Turner Construction prides itself on its partnerships with underutilized communities. It doesn't want to cast a negative light on such a positive team work project in the Community.

Mr. Rosenberger commented that Turner has never deviated from their 20 % minimum commitment, which is what Mr. Rosenberger, feels the Council was actually voting on.

Commissioner Cloud asked if a staff report would be given...where we go from here with this issue.

Staff responded that there is an **audit being conducted and the results will be shared with the Commission.** We are in the process of verifying and validating the 18.7% commitment...

Ms. Vann interjected to clarify that the 18.7% is future participation and not actual ...the actual contracted to date is 12.3% confirmed participation.

*Commissioner Jones requested that this be an action item for our next meeting we have a breakdown of who the companies are and the ethnicity from Turner Construction.*

*Staff suggested that this be a carried item on the agenda and we can work together with Turner and give disclosure on the 12.3% and we can work on the projected.*

- **Streamlining CIP & Public Works Contracting Improvements Budget & Finance Meeting 1/25/2012 (handout provided) Presented by Dr. Weber**
- - Streamlining CIP was received positively as long as there were checks and balances, accountability of results.
  - Concern regarding the Design Build/ Multiple Award Construction Contract (MACC) was expressed and discussed as possibly having an adverse effect on the SLBE.
  - Budget and Finance Committee discussed our participation and recommended that that EOC would have the final sign off prior to awarding contracts.
  - CEOC to create format or reporting method.
  - Budget and Finance Committee discussed the lack of Stakeholder input into the process and it was suggested that the CEOC call the Stakeholder meetings prior to action.
  - CEOC to take a look at the MACC and to come up with some legal things can promote diversity and that staff and that can be put into the process and develop some elements that would impact diversity. We do not want to sacrifice diversity for the sake of streamlining.
  - The IBA recommendations (handout provided) will be answered by staff.

*Commissioner Warner voiced her concern with the timing of the process...and inquired about the acronym IBA.*

*Staff informed that the IBA stands for: Independent Budget Analyst. Who analyzes all proposals brought forth to City Council. The Public Works Department is currently working on the responses to the IBA's recommendations. The Budget and Finance Committee made the importance of the Stakeholders input known.*

*Dr. Weber asked if City Council is informed on who received and was awarded the final contracts.*

*Staff advised that when referring to the standard lowest responsible bid projects Council does not see who the final contract was awarded to. However, when we are talking about the Design Build and the A&E awards they do see to whom the final contract is awarded. Staff will provide a sample of a "B Page" or the EOC project evaluation that is sent to Council.*

*Commissioner Warner stated that if there is a real interest in having Stakeholder input the timing doesn't work.*

*Staff will discuss the time concerns with Engineering and get an update.*

*Dr. Weber informed the Commissioners that the Budget and Finance Committee voted unanimously to send this item to Council with the optimism that there would be Stakeholder input.*

*Commissioner Torwick mentioned that he was contacted by the Mayor's office inviting him to a meeting to discuss the MACC. Commissioner Torwick declined the meeting because he is opposed to the MACC.*

*Staff informed the Commissioners that Public Works was working on putting together Stakeholder meetings. The revisions to the Municipal code addressing the MACC program were also included in the report to the Budget and Finance Committee.*

*Commissioner Warner inquired if the intent that Council approval would be for both Streamlining and MACC?*

*Staff advised that yes this is the intent.*

*Dr. Weber stated that they would like CEOC to make recommendations on the MACC, to make it more diverse and to keep transparency in the process.*

*Commissioner Warner requested a **status update on the current outreach efforts.***

*Staff did provide Engineering with a list of Stakeholders. James Nagelvoort is in charge of those Stakeholders. This Commission will be involved in those meetings.*

*Commission requested a **copy of the Budget and Finance Committee Calendar.***

*Commissioner Jones requested that the Stakeholder meetings be sensitive to the schedules and locations of the meetings so that the Stakeholders can easily attend.*

*Commissioner Torwick requested **information on what the Council may potentially adopt in regards to the MACC?***

*Staff advised that a document has been drafted and is being circulated for opinions and will look into the possibility of **providing the Commission with a copy of the proposed MACC program.***

*Commissioner Warner requested a matrix showing the current contracting process of the Design Build Program vs. MACC and the pros and cons of the contracting methods in terms EO goals.*

***Staff will provide the boiler plate language that we include and the information currently requested on the Request for Quote and Request for Proposal.***

*Commissioner Warner asked that acronyms be spelled out.*

**COMMISSIONER ANNOUNCEMENTS/COMMENTS:** None

**CHAIR'S REPORT:** None

**ADJOURNMENT:** Unanimous Vote to adjourn at 8:05 PM

**NEXT MEETING:** March 7, 2012.

Materials Provided:

- Minutes from December and January
- Letter to Budget & Finance
- Mr. Stemley's Letter
- IBA recommendations
- EOCP Report



## THE CITY OF SAN DIEGO

January 24, 2012

Honorable Mayor and Members of the City Council

At the January 18, 2012 Citizens' Equal Opportunity Commission special meeting, Public Works staff presented additional information regarding the City's CIP Streamlining Recommendations. The Commission acknowledges that the primary focus of the recommendations is to shorten the contract processing time of CIP projects. And, while the proposal might do that, we have concerns with the residual impact of the policy on other aspects of City policies.

The primary focus of the Commission was to review the recommendations through the lens of equal opportunity in contracting. Since the passage of Proposition 209, the performance of the City in the area of equal opportunity has been unsatisfactory, and while we acknowledge progress during the past year, there is still concern regarding the continuing progress towards acceptable results. Thus, any change that removes a level of scrutiny is cause for concern and re-examination.

On a basic level, the Commission is concerned about accountability. The elected officials of the City have direct responsibility to the citizenry through the electoral process. It appears that the elected officials could abdicate their responsibility to public employees and thus make it difficult for the citizens of San Diego to effect change and demand results. This is a major concern of the Commission.

Concerning the specific recommendations, we have the following concerns: The Equal Opportunity Contracting Program is currently listed as Signing Authority for PA 2625s, a document that authorizes projects to begin. The role of the EOCP should be strengthened to ensure all contract awards are reviewed and must be signed before execution. If the EOCP does not sign off on the bid and/or proposal, the contract cannot be signed and executed until all EOC issues are appropriately resolved.

The recommendation that the Commission should receive monthly reports from Public Works concerning contract awards on the surface is laudable. However, without a proper reporting format, this could simply become a rubber stamp and an ineffective tool. We recommend the Commission create a format for the reports that quickly address the salient issues concerning equal opportunity to allow us to be an effective watch dog of the results.

During our meeting, several concerns about MACC were raised by both Commissioners and the public. The details of how these contracts would ensure inclusion of smaller entities are not spelled out. It is possible we could be creating a few mega contracts that do not encourage and

**Citizens' Equal Opportunity Commission**  
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Mayor Sander & Members of the City Council

January 24, 2012

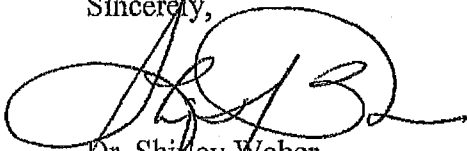
support diversity in contracting and therefore have 4 or 5 large primes avoiding diversity with "good faith efforts", which is what is seen on other City projects on a regular basis. The SLBE Program has shown some progress over the past year – going from 4 percent to 16 percent participation. Since MACC does not support the SLBE Program concept of sizing projects to create opportunities for small local businesses, there is a strong potential negative outcome - it could reverse the progress made to date. These very large projects do not create opportunities for small businesses as prime contractors, rather it creates "potential" opportunities for them as subcontractors.

The Commission is also concerned that this recommendation had not been properly shared among stakeholders in the City. At the meeting, several stakeholders addressed the Commission and wondered why the document was not more extensively noticed to the community and how difficult it was to locate on the City's website. Thus a task force with the major stakeholders to address these issues is essential to achieve the greatest participation and support.

Lastly, the Commission strongly recommends that this proposal not be rushed. First, as stated above, the major stakeholders need time to discuss the implications of this policy and make recommendations concerning its implementation. And, if the council decides to adopt this resolution to establish MAAC projects, it should include a sunset clause that allows for it to end unless voted upon by the council. This would, in essence, create a pilot project that could be evaluated for its effectiveness in streamlining the process AND its effect on diversity in the City.

With very little accountability and sanctions in the City in the area of contracting, the Commission believes that the City should take this opportunity to "think outside the box", and develop policies that might create greater opportunity for diversity in contracting. The current recommendations do nothing to address the issues of "good faith" efforts that yield no results. We have simply rearranged the chairs on the Titanic without acknowledging that there is a hole in the ship of diversity.

Sincerely,



Dr. Shirley Weber  
Chair, Citizens Equal Opportunity Commission

cc: Debra Fischle-Faulk, Administration Department Director  
Tony Heinrichs, Department of Public Works Director

**Citizens' Equal Opportunity Commission**  
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# Black IPO Construction

Tony Heinrichs

Public Works Director

City of San Diego

202 C St 9<sup>th</sup> MS-9A

San Diego, CA 92114

Subject: San Diego New Central Library Docket # 151

Mr. Heinrichs

It was my understanding that Black IPO has a 2<sup>nd</sup> Tie Subcontract on the City of San Diego New Central Library project for \$4,089,195 Item 151 SDNCL Report to Council # 10-089. My concern is as of October 1, 2011 I have not received the list Work or Contract for listed work.

This item was approved by City Council June 28 2010 in the Report to date I have received no direction on how this issue is beeing address by the City Department of Public Works.

I currently have \$ 174,000 of onsite PO work and I am awaiting the \$3, 915, 1995.00 balance of the work from the City of San Diego New Central Library Project. With the City beening at a 1% participation level with African Americans it is discouraging to keep bidding work and being listed for work levels we never get.



Wendell Stemley

Black IPO

6125 Imperial Ave

San Diego, CA 92114

619-527-1668

Cc: Councilman Tony Young

EEOCP: Debra Faulk

MUNICIPAL GOVERNMENT/ORGANIZATION THRESHOLD COMPARISON						
Type of Contract	City of San Diego (Current)	City of San Diego (Proposed)	County of San Diego	Port of San Diego	San Jose	Phoenix
Public Works Contracts	\$1,000,000	\$30,000,000	\$1,000,000	\$125,000	\$1,000,000	\$50,000
Consultant Agreements	\$250,000	\$1,000,000	\$1,000,000/ 1 year	\$125,000	\$250,000	\$50,000
Public Works Change Orders	\$200,000	\$500,000	Based on State Law. Percentage of Contract	<\$1,000,000 (10% of original Contract); \$1.0 -\$5.0 million (6% of original contract); >\$5.0 million (4% of original contract)	\$100,000	\$50,000
Public Works Projects - Job Order Contracts	\$500,000	\$1,000,000	\$1,000,000/ 1 year	Not Available	Not Available	\$50,000

## IBA Recommendations for the CIP Streamlining Measures

### Increase of City Council Approval Thresholds

#### Public Works Projects

1	The B&FC confirm with the City Attorney's office that the Council has the authority to pull projects of interest from the summarized project list and have staff return to Council at a later date for final approval prior to awarding the contract. This should also be clarified for Consultant contracts.
2	That when the streamlining proposal goes to the full Council an example of the summarized list of projects that is proposed to be included in the Annual CIP document be provided for Council review.
3	Clarify how information related to certain projects such as street resurfacing and operating budget impacts will be shared with Council prior to the approval of these types of projects via the budget document.
4	Sufficient operating budget impacts will be included in the annual CIP document.
5	That an implementation timeline for the CIP Transparency measures is included as part of the backup material when the streamlining proposal moves forward to Council.
6	Consideration be given to the development of a Council Policy that would include what information will be provided to the Council and public related to the CIP program and how and where that information will be provided.

#### CIP Consultant Contracts

7	Define in the Municipal Code what specific types of consultant contracts would fall under "Consultant Agreements for Public Works Contracts".
8	Define how and the type of information for Consultant agreements for Public Works Projects will be presented in the annual budget documents. This information should be included in a Council policy.

#### Change Order Limits and Job Order Contracting Tasks

9	The B&FC clarify how Council will be notified of Change Orders and the awarding of Job Order Tasks. This information should be included in a Council Policy.
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**IBA Recommendations for the CIP Streamlining Measures****Multiple Award Construction Contracts (MACC)**

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The B&FC discuss with EOC staff how the EOCP will operate under the streamlining proposals and that the type of information and the reporting frequency to the CEOC be included in a Council Policy.

**Other Streamlining Measures Proposed by Staff****Easement/Land Acquisitions**

11

Clarify if Staff is requesting an increase in the thresholds for easements/Land Acquisitions.

EOC Program Update

Construction Statistics (6 month review - PRELIMINARY)

Total Dollars:	\$94,718,850
Certified Firms:	\$21,657,261 (23%)
*Female Owned:	\$ 7,398,396 (8%)
*African American:	\$ 815,829 (.86%)
*Asian:	\$ 1,204,518 (1%)
*Asian Subcontinent:	\$ 208,773 (.22%)
*Hispanic:	\$23,719,637 (25%)
*Native American:	\$ 426,573 (.45%)

\*Includes non-certified firms

SLBE Program

Applications: (As of Jan , 2012)

Received:	634
Approved:	422 (223 construction; 212 professional svcs; 16 general svcs; 4 suppliers)*
Pending:	145
Denied:	67
Inactive:	8

\*Totals may include duplicate company values as one company may have multiple license types. Actual approved company count is less than total reflected.

Good Faith Effort Requirements

- Focus Group met on 1/9/12 to review current GFE requirements – see attached list of items identified by group.
- Staff to provide proposed revisions to commission prior to implementation for feedback.

SLBE Program Improvements

- Staff is currently working on areas that have been identified for potential improvements. (i.e Income Caps A/E Consultants, Goods & Services, Contract Delivery Methods – DB, CMAR, MAAC etc)
- Staff will provide proposed revisions to commission for feedback prior to presentation to Rules Committee and City Council.