

THE CITY OF SAN DIEGO  
**REPORT TO THE CITY COUNCIL**

DATE ISSUED: January 21, 2011 REPORT NO. 11-016

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

SUBJECT: Citizens Equal Opportunity Commission 2009/2010 Annual Report

REFERENCE: Municipal Code Chapter II, Article 6, Division O, 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 Citizen's Equal Opportunity Commission (CEOC) was established, pursuant to the authority of Municipal Code section 26.16 enacted on November 1, 2 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 the 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 Opportunity Employer and as a provider of equal opportunity to individuals and firms desiring to contract with the City. Commissions are appointed by the Mayor and confirmed by the City Council. They serve two year terms, without compensation. There are nine actively serving commissioner. Among the commissioners, the following constituencies are represented: African American, Asian/Pacific Islander, Disabled, Filipino, Latino, Lesbian/Gay/Bisexual/Transgender, and Native American.

The CEOC meets regularly at 6:00 PM, on the first Wednesday of each month in the 12<sup>th</sup> Floor Council Committee meeting room of the City Administration Building located at 202 C Street, San Diego. The meetings are publicly noticed and open to the public. In addition to the regular

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meetings, the commission has occasionally held monthly working meetings, also open to the public and publicly noticed, at 8:00 AM on a weekday immediately following the regularly scheduled meeting, to work on specific issues being addressed by the Commission and the Council.

The past year, the Mayor has been very diligent in appointing new members to the Commission when Commissioners have been termed out. Additionally, the members of the Commission have been diligent about attending meetings and the Commission has had great success in having a quorum in order to conduct meetings. In fact, the Commission met once when the City Administration building's elevators were closed due to an earthquake. The Commission met on the first floor in order to deliver its opinion on matters coming before the City Council. Past and current Commissioners during this reporting period include:

Brad Barnum	Rebecca Llewellyn (past member)
Eileen Chaske	Mike Olivier
Ron Cho	Daniel Salas (past member)
Jon Cloud	Alden Salcedo
Stampp Corbin (Vice-Chair)	Dr. Shirley Weber (Chair)
Debbie Day (past member)	Maurice Wilson
Juan Gallegos	Dr. Sarah Young (past member)

## OVERVIEW

The City has identified itself as an "Equal Opportunity Employer" and seeks to accomplish this goal in two major ways: employment and public contracting. The public contracting aspect of the City's programs involves the contracts 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, however, no single "Equal Opportunity Program" 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.

In the past, the greatest challenge of CEOC was getting the necessary data to evaluate and monitor programs. As stated in earlier annual reports, the city's data collection efforts were abysmal. There was little information provided to properly evaluate programs and their effectiveness. Additionally, the reporting of the scant data available was irregular. The CEOC requested timely and regular reporting at monthly meetings. Because of the number of City departments involved in equal opportunity, the commission developed a clear line of expectation that the responsibility for ensuring accurate and regular reports rested on the shoulders of Ms. Debra Fischle-Faulk, Administration Department Director. The CEOC is pleased to report that the staff delivered on this responsibility, thus making the Commission a more effective operating body and able to respond to matters affecting equal opportunity in a timely manner. This resulted in the CEOC appearing before Rules Committee, full Council, and diversity committees at city and county levels, and delivering written opinions to the effected groups.

The staff this year has made equal opportunity a top priority. Thus, they have consistently brought critical issues before the Commission that might improve the City's equal opportunity record, which has consistently been low for the past several years. The fact that the staff assigned to the commission has made improvement a high priority, there does not appear to be such evidence from the Council's actions. Absent an affirmative action program in the state, the efforts to improve the City's record will require extraordinary commitment on the part of the elected officials who set the tone for the operation at the city level. Seldom is the topic of equal opportunity brought before the Council, unless it is introduced by the CEOC. This makes equal opportunity a step child in the City's operations. It is in this context that this report is presented concerning the work of the CEOC and City's efforts in the area of Equal Opportunity.

#### DISCUSSION:

As stated above, 2009/2010 presented new opportunities for the CEOC. The ability to receive data concerning the city's programs and their effectiveness propelled the Commission into the arena of pro-actively effecting programs and policies being considered by the Council.

#### *SUBCONTRACTING OUTREACH PROGRAM (SCOPE)*

Fortunately, at the request of the Administration Department Director, there was an audit conducted of the SCOPE program that revealed the limitations of SCOPE. The Commission addressed many of the issues presented by the audit and supported the recommendation that a Disparity Study be conducted. This recommendation of a Disparity Study has been on the agenda of the Council for some while. It was addressed in last year's report and not properly address last year because the Council was waiting for the decision of the Coral Construction, Inc. v. City and County of San Francisco case. That case has been ruled upon, however, its decision has not provided San Diego with much direction concerning this area. Thus, the CEOC reiterates the necessity for a Disparity Study.

As stated in last year's report, SCOPE has not been effective in increasing MBE, WBE, DBE and/ or DVBE participation in City construction contracts. Last year's report also called out the fact that a centralized bidder registration software system was promised and was to have been implemented and to date, has not been. It has taken the City more than three years to implement the new software, which is still not operational. However, the Administration Department purchased Prism Compliance Management software to assist with automating compliance related activities, reporting and certification.

#### *CONTRACT VENDOR REGISTRATION SYSTEM*

As stated above, to the dismay of the Commission, this system is still not operational. Promised in 2008, and guaranteed in September of 2009, the Commission awaits the installation and implementation of this system. Having waited so long for this software, we are hopeful that it will make a marked difference in the operation of the outreach efforts of the City and positively impact the number of MBEs/WBEs/DBEs and DVBEs doing business in San Diego. In spite of

not having an automated system, staff has manually noticed 40 projects to SLBEs in accordance with their NAICS codes.

#### **SMALL LOCAL BUSINESS ENTERPRISE (SLBE)**

The Commission was pleased to participate in the preparation of the final draft of the SLBE Program, ultimately approved by the Mayor and adopted by the City Council. A number of drafts were presented to the Commission for our questions, comments and input. After receiving responses to our input, questions and suggested refinements, the Commission voted to support the final draft. We receive monthly updates from staff and look forward to positive results.

#### **THE MINOR PUBLIC WORKS PROGRAM (FORMERLY THE MINOR CONSTRUCTION PROGRAM)**

The Minor Construction Program has been replaced with a Minor Public Works Program (SLBE) that has a higher limit (\$500,000 in comparison to \$250,000) and more incentives for bidders. The recommendation of the CEOC of last year's report was adhered to by staff in the revamping of this program.

The staff has been actively involved in promoting this program. To their credit, they have conducted numerous workshops for various organizations on the new program and have been aggressively registering small local businesses into the program. To date there are 176 have been approved SLBEs, 90 pending applications with 20 denied and 8 inactive.

#### **CONSTRUCTION CONTRACTS**

Construction contracting has consistently been the area of great concern of CEOC. The numbers are unacceptably low and the resistance to change equally entrenched. This was most apparent in the activities of the AGC –San Diego's challenge of the Caltrans Disparity Study. The CEOC, in its letter to the Council, found the challenge unconscionable in light of the fact that 95% of Caltrans \$3 billion in federal funds were awarded to white male contractors. The Commission called upon the Council to join them in this effort to stop the AGC's efforts. The CEOC was supported by the local NAACP and the Equal Justice Society of San Francisco.

Despite the efforts of the staff, San Diego's progress in this area is small. It has increased from 3% (2009) to 4.4% (2010). The Commission has yet to feel the impact of the Mayor and City Council's expressed outrage where the progress of the City in the area of equal opportunity in contracting was declared "abysmal ." While we recognize the challenges with a strict low bid process, we had hoped to see a greater increase.

#### **ARCHITECTURAL AND ENGINEERING (A&E) CONSULTANT FIRMS**

Unlike construction, the City's equal opportunity's efforts in the areas of architecture and engineering are more promising. Commitments to certified firms increased from 11% (2009) to 40 % (2010). In this area, there appears to be greater flexibility in the awarding of contracts.

And while the Commission is pleased with the increase, there is still room for greater diversity given the size of the ethnic, disabled and female populations in San Diego.

**GOODS & SERVICES**

We recognize the City spends hundreds of millions of dollars on goods and services and have expressed our interest in raising the level of attention to diversity in this area. We have requested statistical reports in order to gage the city's progress. The limited information received to date has been difficult to understand and we therefore have been unable to determine where this program stands. In addition we are unclear of the status of the Vendor Registration System that we understood was electronic at one time but is currently manual.

It is our understanding that the City Council requested the IBA to research successful diversity programs in the procurement of goods and services and report back. The Commission would like to receive that report and recommends a comprehensive programmatic semiannual report on goods and services be provided to the Mayor, Council and Commission.

**EMPLOYMENT**

Recognizing that diversity in city employment falls under our mission, the Commission requested and received a presentation on the latest diversity statistics of the city from the Personnel Department. This was the first presentation made in several years. We will continue to monitor these statistics on at least an annual basis.

**OUTREACH ACTIVITIES**

The following outreach/technical assistance activities were conducted to assist businesses with understanding how to do business with the City and new program elements:

Date	Event	Purpose
12/11/09	SBA & Surety Assoc. Bonding Workshop – Pilot	Technical Assistance
01/29/10	SBA & Surety Assoc. Bonding Workshop – EOCP Outreach	Technical Assistance
04/08/10	Presentation to Small Business Group – EOCP Outreach	SLBE /Program Application Rollout
04/09/10	Consultant Group Presentation	Program Presentation
04/14/10	Public Agency Consortium Meeting	SLBE Program

		Presentation
05/19/10	Balboa Park Club Bidders Symposium – E&CP Outreach	SLBE Program Application Workshop /Doing Business with the City
05/25/10	Tubman Chavez Multicultural Center – EOCP Outreach Event	SLBE Program Presentation/Application Workshop
05/26/10	Consultant Group Presentation	SLBE Program Presentation
06/01/10	Elite Service Disabled Veterans Monthly Meeting	SLBE Program Presentation/Application Workshop
06/02/10	Subs For Subs – CCDC Annual Outreach	SLBE Program Presentation/Application Workshop/ How to Do Business with the City
06/03/10	Turner School of Construction Management	SLBE Program Presentation/Application Workshop
06/04/10	Meeting with City Protégés	SLBE Program Presentation/Application Workshop
06/07/10	Meeting with San Diego Unified School District	SLBE Program Presentation
06/10/10	Meeting with Construction Industry	SLBE Program Presentation
06/18/10	Small Business Advisory Board	SLBE Program Presentation
07/20/10	Asian Business Association	SLBE Program Presentation/How to Do Business with the City
07/26/10	San Diego Regional Supplier Development Council	SLBE Program Presentation/Application

		Workshop/ How to Do Business with the City
07/27/10	Tubman Chavez Multicultural Center – D4 Outreach Event	SLBE Program Presentation/Doing Business with the City

**COMPLIANCE RELATED ACTIVITIES**

With the focus shift to compliance activities, there has been a significant increase in this area as indicated below:

Compliance Activity	FY2010	FY2009
Pre-bid meetings* <sup>1</sup>	104	76
Pre-construction meetings*	69	Not included in 2009 report
Consultant interview panels	48	15
RFP review	108	37
Project site visits	107	17
Employee interviews	176	Not included in 2009 report
Certified payrolls reviewed	1,238	Not included in 2009 report
\$ recovered for employees	\$769	Not included in 2009 report
Scope documents reviewed	78	Not included in 2009 report
Scope documents failed	15	Not included in 2009 report
Federal good faith effort documents reviewed	5	Not included in 2009 report
Federal good faith effort documents failed	2	Not included in 2009 report
EO Plans requested, received and reviewed	98	12
EO Plans approved	74	10

<sup>1</sup> Provide details of EO bid/contract requirements and answer contractor questions.

EO Plans pending additional information	24	2
Final Summary Reports received and approved	27	29
Subcontractor payment verifications	207	58
\$ recovered for subcontractors	\$75,406	Not included in 2009 report
\$ assessed for public contract code violations	\$2,694.48	Not included in 2009 report

**STRUCTURE AND STAFFING**

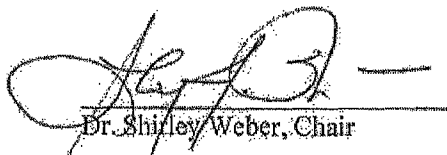
It has been quite a challenge to implement the work of equal opportunity with extremely reduced staff. However, despite that, the work of those assigned to CEOC has been excellent. The willingness to provide the Commission with much needed data and updates has allowed the Commission to respond quickly and effectively to the various proposals before the city. (See the log of CEOC activities since the last report).

We realize that the structure was not optimal. Therefore, we are pleased with the addition of Mr. Henry Foster as Program Manager in the Administration Department. Mr. Foster brings the type of government and private industry expertise needed to enhance the work of the Commission.

CEOC accomplished much this past year. It has soundly placed the City on the path to progress. What it needs is the support of the Mayor and City Council to make Equal Opportunity a top priority. Other cities in California faced with similar challenges have outdistanced San Diego in this area. San Diego motto of "the Finest City" is often tarnished by it dismal report in Equal Opportunity.

The Commission appreciates the staff and those who have supported our work. We eagerly and enthusiastically enter 2011 with high expectations and optimism.

Respectively Submitted,



Dr. Shirley Weber, Chair