
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: February 21, 2008

IBA Report Number: 08-18

City Council Meeting Date: February 25, 2008

Item Number: 204

Equal Opportunity Contracting Program

OVERVIEW

On Monday, February 25, 2008 the City Council will hear a status report on the City's Equal Opportunity Contracting Program (EOCP). Included in the status report are changes that have been implemented to address deficiencies with EOCP and a discussion of those still underway.

On August 1, 2007 the Rules, Open Government, and Intergovernmental Relations (Rules) Committee heard presentations from the Mayor and the Independent Budget Analyst (IBA) on the status of the EOCP. At that meeting, the Committee approved five action items regarding the EOCP and directed staff to return to the Rules Committee on October 10, 2007 to address the items. On October 10, 2007 the Mayor's staff returned to the Rules Committee and presented Report # 07-156 that detailed the actions taken to date to address deficiencies with EOCP and specifically address the items approved by the Rules Committee in August. At the October 10, 2007 meeting, the Rules Committee requested that the Mayor's Office report back to the Committee in December on additional concerns raised by the Committee members and the status of the changes to the program. On December 6, 2007 the Rules Committee heard a brief update from the Mayor's staff and then referred the status of EOCP reforms to the full City Council.

This report will review the changes implemented by the Mayor's Office and amendments to the EOCP suggested by the City's EOC consultant, Franklin Lee. Our office also offers additional recommendations for City Council consideration to address the deficiencies with EOCP.

FISCAL/POLICY DISCUSSION

Changes suggested by the Mayor's office:

The Mayor's February 20, 2008 report (Report #08-020) outlines changes that have occurred that address the deficiencies with the EOCP. Significant changes that the IBA would like to point out include:

- Enforcement of submission of Final Summary Reports related to the Subcontractor Outreach Program (SCOP). Previously, this requirement was not being enforced. The impact of this was that the City was not able to validate that minimum subcontract percentages were being met by contractors and final payments were being released.
- Procedures for granting waivers to the SCOP program have been developed. Only the Director of Administration and/or the EOCP Program Manager has the authority to waive SCOP requirements. The request for waiver and response will be in writing. Requests and determinations will be maintained and regularly reported to the City Council. Previously, contracts such as General Requirements Contracts had an automatic waiver of SCOP requirements.

In addition to the changes listed above, the Mayor's staff will be presenting additional amendments to the EOCP and SCOP suggested by Franklin Lee to the Public Safety & Neighborhood Services Committee in April. These amendments include additional enforcement, documentation, outreach, and audit measures. The IBA is supportive of the changes outlined in the Mayor's February 20, 2008 report and the amendments suggested by Franklin Lee. However, one of the amendments suggested by Mr. Lee is to have the IBA conduct period audits on the degree of compliance with SCOP standards. The IBA suggests that due to the nature of this activity this task should be handled by the City's Internal Auditor. Our office will discuss this issue with EOC staff prior to April's Public Safety & Neighborhood Services Committee meeting.

Additional recommendations suggested by the IBA:

Staffing of the Equal Opportunity Contracting Program:

The Fiscal Year 2008 budget included the decentralization of the EOCP as part of the Purchasing & Contracting Department's Business Processing Re-Engineering Study (BPR). The initial plan was for limited staff to remain with the Purchasing & Contracting Department (P&C) for administration of the program. Monitoring responsibilities would be split between the P&C and Engineering & Capital Projects (E&CP). However, this plan was not successful and in the Mayor's August 1, 2007 report to the Rules Committee (Report #07-135) it was reported that EOCP functions would be centralized into P&C. On January 14, 2008, EOCP was transferred from P&C to the Administration Department, headed up by Debra Fischle-Faulk, who reports directly to the Chief Operating Officer. In addition, a new Program Manager, Beryl Rayford, has been hired.

It is important to note that a successful EOCP has many components including administration, monitoring, compliance, data collection, and outreach. In the Mayor's February 20, 2008 report it is stated that staff in the EOCP has increased from six employees in August to the current staffing level of eleven by transferring staff from other departments. The report states that with the additional resources staff "can perform the functions of the EOCP" but a comprehensive review of "work activities, workloads and gaps in services are currently underway." As the table below shows, even with the recent increase of staffing in the program to eleven, this is substantially lower than the staffing levels for Fiscal Years 2006 and 2007.

Equal Opportunity Program Staffing

Fiscal Year 2006 ⁽¹⁾	Fiscal Year 2007 ⁽¹⁾	Fiscal Year 2008 ⁽²⁾
22.50	25.00	11.00

⁽¹⁾Fiscal Year 2007 Annual Budget Page 155

⁽²⁾Mayor's February 20, 2008 report (Report # 08-020)

It has been well documented over the last eight months that many aspects of the EOCP have deficiencies. However, the IBA would like to point out the emphasis given to contract compliance and monitoring in the Mayor's Report. Currently federally funded projects have been monitored for compliance at a minimum level. Monitoring efforts for municipal, City-funded projects have been complaint-driven. The Mayor's staff states that "adding staff will allow additional field visits and audits to be conducted to further ensure compliance with federal regulations." The IBA agrees with this assessment and believes additional EOC staff members in the field will provide a greater presence and awareness of the City programs. ***The IBA also feels that the onus of compliance and monitoring of EOC should not be the sole responsibility of EOCP especially with the current staffing levels of the program. Multiple City departments have staff in the field that, if trained, could be additional City "eyes and ears" for compliance and monitoring.*** However, the IBA is not recommending that other departments become a replacement for EOCP staff.

As stated above, a successful Equal Opportunity Program has many components. Having sufficient staffing levels to ensure that the program can be successful is essential. In light of this the IBA offers the following recommendations:

- ***A staffing plan including expenses and funding sources should be included as part of the Fiscal Year 2009 budget process. This plan should be provided to the City Council prior to the release of the Fiscal Year 2009 Proposed Budget.***
- ***Performance measures should be developed and included in the Fiscal Year 2009 Proposed Budget to ensure that program objectives are being met.***

Council Policy 300-10

Council Policy 300-10, entitled "Equal Opportunity," commits the City Council to equal opportunity activities and specifies annual reporting requirements on equal opportunity programs. (See the attached Council Policy.) In our July 30, 2007 report to the Rules

Committee (Report # 07-79) we noted that the policy was last amended on May 19, 1986 and is in need of updating to conform to current laws and clarify or reinforce reporting requirements and responsibilities. Examples of reporting requirements and responsibilities included in the Policy are:

- The Personnel Director will submit semi-annual reports detailing goals, progress, and strategies to the City Council for review and approval by the Rules Committee and Council. These reports will contain data of sufficient detail as to provide a clear and comprehensive breakdown of the City's workforce in all City departments.
- The agency and corporate directors of those entities under Council direction and contract will submit semi-annual reports detailing goals, progress and strategies to the City Council for review and approval by the Rules Committee and Council. These reports will contain data of sufficient detail so as to provide a clear and comprehensive breakdown of the workforce.
- The Equal Opportunity Commission shall be appointed by and report to the City Council, and shall:
 - Advise on a continuing basis and make recommendations regarding the Program, as are deemed appropriate and/or necessary, to the Mayor, City Council, Civil Service Commission, Manager and other agencies and appropriate authority of City government.
 - Submit written semi-annual reports which evaluate the progress of the City and its agencies for review and acceptance by the Rules Committee and Council. Submittal should coincide with semi-annual submittals by the City Manager.

It is unclear if the reporting requirements items listed above are occurring and if they are, what forum is being used to comply with the Policy. In light of this, the IBA offers the following recommendation:

- ***Request that the Mayor's Office, the Independent Budget Analyst, the City Attorney's Office, and the Personnel Department work together to update Council Policy 300-10 to reflect the goals of the updated equal opportunity programs, Proposition 209 legal requirements, and clarification of reporting requirements and responsibilities. This should be completed prior to the start of Fiscal Year 2009.***

Project Delivery Systems for Capital Improvement Projects and Equal Opportunity Contracting

On a weekly basis Capital Improvement Projects of varying sizes are docketed for City Council consideration. For these projects the City uses different delivery systems for construction. Examples of these delivery systems include Design-Bid-Build, Design-Build, and General Requirements Contracting. Currently, the E&CP Department selects delivery systems based on numerous factors. However, the IBA is not aware if the criteria for selecting one delivery system over another has been discussed with the City

Council or been made available to the public. In May, 2001, E&CP Department did hold a Capital Improvement Program workshop with the City Council that included a discussion on the types of project delivery systems. This workshop did not include information on the criteria used to select one system over another.

It is important that the City Council and the general public have a general understanding of these processes and how one delivery system impacts or is impacted by EOCP. The City Council currently holds trainings on financial related subjects and the IBA feels that it would be beneficial to both the Council and the public for trainings to be held on the City's project delivery systems. Based on this information, the IBA offers the following recommendation regarding project delivery systems and EOCP:

- ***Provide the City Council with Project Delivery System training. This training should include the criteria used for selecting one system over another. In addition, the training should outline the impacts to the EOCP program and/or projects by selecting one system over another.***

Disparity Study

On September 10, 2007 the City Attorney released a Memorandum titled Overview of Law Concerning Equal Opportunity in Contracting: Existing Programs and Recommendations. In the Memorandum the City Attorney recommended that the City should commission a new disparity study. In response to the City Attorney's Memorandum of Law, the Mayor recommended, based on advice from Franklin Lee and his internal task force, to hold off on undertaking a full fledged disparity study. The reasons given included the possibility of additional rulings on the *Coral Construction* case in the future and time needed to update the City data collection processes which could reduce the costs of a disparity study. At that time our office expressed concern with waiting on starting a disparity study. However, after subsequent discussions with EOC staff and the positive changes outlined in the Mayor's February 20, 2008 report that includes the hiring of interns to assist with data collection, the IBA agrees that we should wait until the City has enough data to undergo an effective disparity study. However the IBA does make the following recommendation:

- ***Update the City Council or the Public Safety and Neighborhood Services Committee on the status of data collection and timeline for determining if the City will need to undergo a disparity study.***

CONCLUSION

The IBA supports the changes to the EOCP program as outlined in the Mayor's February 20, 2008 report. We are also supportive of the amendments suggested by Franklin Lee, with the one noted exception. Our office also offers the following recommendations:

- *A staffing plan including expenses and funding sources should be included as part of the Fiscal Year 2009 budget process. This plan should be provided to the City Council prior to the release of the Fiscal Year 2009 Proposed Budget.*
- *Performance measures should be developed and included in the Fiscal Year 2009 Proposed Budget to ensure that program objectives are being met.*
- *Request that the Mayor's Office, the Independent Budget Analyst, the City Attorney's Office, and the Personnel Department work together to update Council Policy 300-10 to reflect the goals of the updated equal opportunity programs, Proposition 209 legal requirements, and clarification of reporting requirements and responsibilities. This should be completed prior to the start of Fiscal Year 2009.*
- *Provide the City Council with Project Delivery System training. This training should include the criteria used for selecting one system over another. In addition, the training should outline the impacts to the EOCP program and/or projects by selecting one system over another.*
- *Update the City Council or the Public Safety and Neighborhood Services Committee on the status of data collection and timeline for determining if the City will need to undergo a disparity study.*

The changes that the Mayor's Office has implemented plus the amendments and recommendations suggested by Franklin Lee and our office will ensure that the deficiencies with the Equal Opportunity Contracting Program will continue to be addressed.

[SIGNED]

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[SIGNED]

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Attachment