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## OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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**Date Issued:** September 18, 2008

**IBA Report Number:** 08-98

**City Council Meeting Date:** September 22, 2008

**Item Number:** 150

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# Equal Opportunity Contracting Program- Final SCOPE Recommendations/ Bi- Annual Statistics

## OVERVIEW

On Monday, September 22, 2008 the City Council will be asked to consider changes to the City's Subcontracting Outreach Program (SCOPE) and the approval of a new Council Policy related to Equal Opportunity Contracting. In addition, staff will provide a status report on the City's Equal Opportunity Program (EOCP) including the latest construction contracting statistics.

On February 25, 2008 the City Council heard an update on the EOCP program. At the meeting, the City Council directed the Mayor's Office, the City Attorney's Office, Personnel Department, and the Independent Budget Analyst to work together to update Council Policy 300-10. On July 9, 2008 the Public Safety and Neighborhood Services (PS&NS) Committee heard a Quarterly update on the EOCP. Included in staff's presentation was recommended changes to the SCOPE program and the introduction of a new Council Policy to augment the existing Council Policy 300-10. At the meeting, the PS&NS Committee referred the changes to the City Council for consideration.

## FISCAL/POLICY DISCUSSION

### **Changes to the SCOPE Program:**

As indicated in Staff's July 9, 2008 report to the PS&NS Committee, the most current Construction Contract statistics continue to show a serious lack of participation by women (.19% participation) and minority owned firms (0% - 1.66% participation depending on ethnicity). This represents statistics from July 1, 2008 to March 2008. This is a continuation of the low participation demonstrated by the Fiscal Year 2007 statistics (7/1/06 – 6/15/07) which showed minority participation of less than .05%. This is despite recent efforts by EOCP staff to increase participation.

One of the tools used by the City to help increase more diverse participation is the City's SCOPE program. The SCOPE program applies to City-funded construction contracts in excess of \$200,000 (Proposed to change to \$100,000). The SCOPE program requires bidders on City construction contracts to make subcontracting opportunities available to a broad base of qualified subcontractors and to achieve a minimum subcontractor participation level. However, based on the current statistics and feedback from the City's consultant on EOC, the determination was made to strengthen the SCOPE program. The following changes to SCOPE have been proposed to strengthen the program:

- **New procedures for granting waivers to the SCOPE program have been developed.** Previously, it was unclear when and why a waiver was granted. With the proposed changes, only the Director of Administration and/or the EOCP Program Manager has the authority to waive SCOPE requirements. The Director of EOCP will prepare a justification memorandum that explains the basis and factual findings supporting the waiver decisions. Program waiver justification memoranda will be submitted to the Mayor and the members of the City Council on a quarterly basis.
- **Enforcement of submission of Final Summary Reports related to SCOPE.** The proposed changes to the program include stronger language related to the submission of the Final Summary Reports. Previously, this requirement was not being enforced. The proposed language requires the EOCP to review and verify one hundred percent of subcontract participation reported in the Final Summary Reports within 10 business days of submission. The review must be completed prior to the release of final retainage.
- **Annual audits and reporting on the EOCP**  
The proposed language requires the Office of the City Auditor or an independent outside firm to conduct an annual audit regarding the operation of the program. The annual audits include a review of the EOCP waivers and the adequacy of justification provided by EOCP for such waivers. In addition, the audit will include a cost-benefit analysis of SCOPE including an assessment of administrative costs to the City, bidder compliance costs, and assessment of the level of subcontract participation with and without application of the program. It should be noted that the City Auditor has included the review of the EOCP in his Fiscal Year 2009 work plan. This work plan was recently reviewed and accepted by the Audit Committee and will be coming to the City Council in October.

Overall the IBA supports the proposed changes to the SCOPE program. If approved, the recommended changes should result in greater transparency in relation to program waivers and a strengthening of reporting requirements. The inclusion of an annual audit of the program will provide the City Council with tangible information on the success of the program.

### **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. It should be noted that the existing Council Policy is not specific to equal opportunity *contracting*, but more of an umbrella policy for all equal opportunity activities. The draft new proposed policy for Council consideration is exclusively for equal opportunity contracting. It is intended as a companion policy to existing Council Policy 300-10. The significant aspects of the new policy include:

- The policy is intended to supplement San Diego Municipal Code Chapter 2 Article 2 Divisions 27, 35. (See Attachment A)
- Requires the Administration Department Director and/or the EOCP Program Manager to submit quarterly reports to Council Committee and to the City Council detailing goals, progress and strategies of the program for review and approval. The required reports will contain data that will provide a “clear and comprehensive breakdown of the various program elements and results.” Under the current policy, EOCP staff was not required to submit status reports.
- Reaffirms the responsibilities of the Citizens Equal Opportunity Commission (CEOC) including its responsibilities to assist the City in achieving the Goals as established in Council Policy 300-10 and the proposed EOC policy. The new policy also reaffirms CEOC’s responsibility to establish and regularly update by-laws that govern the Commission and establishes a timeline for submitting its quarterly reports. The existing Council Policy does not include language related to by-laws or a timeline for submission of reports.

Our office has been working with the Mayor’s staff and City Attorney’s office to update the existing policy. We feel that the new policy will clarify reporting requirements and the operational responsibilities for the CEOC.

### **Status on IBA Recommendations from previous reports**

In the last 11 months the IBA has released reports 07-96 – Update Report from the Mayor’s Office Regarding Committee Direction for Item No. 1 from the August 1, 2007 Rules Committee Meeting on the EQUAL OPPORTUNITY CONTRACTING PROGRAM and 08-18 Equal Opportunity Contracting Program that included recommendations that were approved by either Council Committee or the City Council. The following table provides a status update on the recommendations.

<b>Report # 07-96</b>	
<b>Recommendation</b>	<b>Status</b>
Consultant should present to the City Council or committee the results of his analysis of the City's EOCB before implementing reforms. This should be done as soon as the consultant has completed his analysis.	Information was provided on EOCB reforms to the Rules Committee on December 6, 2007 and the City Council on February 25, 2008.
Due to the length of time required to complete a Disparity Study, the IBA recommends that City staff begin working on a Request for Proposals to have available if, and when, the decision is made to move forward with the study.	Staff has requested copies of the Request for Proposals from the Airport Authority and CALTRANS for their Disparity Studies to use as reference if the City decides to move forward with a study.
The City Council should request that the Mayor develop and present a staffing plan that includes funding sources to address the needs of the EOC program.	The Fiscal Year 2009 Budget includes 11.00 positions for the EOCB. Staff indicated in their July 9, 2008 Report to the City Council that they currently have 6.00 positions filled and are in the process of hiring the additional 5.00 positions. Staff has indicated that the 5.00 vacant positions will not be impacted by the current hiring freeze.

<b>Report #08-18</b>	
<b>Recommendation</b>	<b>Status</b>
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.	The Fiscal Year 2009 Budget includes 11.00 positions for the EOCB. Staff indicated in their July 9, 2008 Report to the City Council that they currently have 6.00 positions filled and are in the process of hiring the additional 5.00 positions. Staff has indicated that the 5.00 vacant positions will not be impacted by the current hiring freeze.
Performance measures should be developed and included in the Fiscal Year 2009 Proposed Budget to ensure that program objectives are met.	The Fiscal Year 2009 Budget includes nine performance measurements to ensure that EOCB objectives are met.

<p>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.</p>	<p>The City Council will consider a new Council Policy that augments the Current Equal Opportunity Council Policy at the September 22, 2008 City Council meeting.</p>
<p>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.</p>	<p>The Office of the IBA is working with Engineering and Capital Projects to establish criteria and a timeline for this training.</p>
<p>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.</p>	<p>See the Disparity Study and Data Collection section below for status of these two items.</p>

**Disparity Study and Data Collection**

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.

Based on information provided by the City Attorney's office, the *Coral Construction* case is still pending and is awaiting a ruling by the California Supreme Court. It is not known when the case will be heard. EOCP staff has begun to gather historical data collection which they have indicated is very time consuming. EOCP management is

balancing the staff time necessary to collect the historical data and moving the program forward.

## CONCLUSION

The IBA supports the changes to the SCOPE program and the introduction of a new Council Policy related to Equal Opportunity Contracting. If approved, the changes to SCOPE and the new Council Policy will help ensure that certain deficiencies with the Equal Opportunity Contracting Program will be addressed. It is important that the results are closely monitored. If the trend of the lack of participation by women and minority businesses continues, other strategies will need to be pursued.

**[SIGNED]**

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**[SIGNED]**

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APPROVED: Andrea Tevlin  
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Attachment