



THE CITY OF SAN DIEGO

CITIZENS' EQUAL OPPORTUNITY COMMISSION

MEETING MINUTES

Wednesday, February 3, 2016
6:00 – 8:00 p.m.
City Administration Building
Council Committee Room
202 C Street – 12th Floor
San Diego, CA 92101

TAPE NUMBER:

CALL TO ORDER at: 6:12 PM by Chair Warner

ROLL CALL:

Laura Warner, Chair

Dan Ortiz

Kristine Custodio, Vice Chair (arrived late)

Rafael Perez

Susan Jester

Monte Jones

EXCUSED:

Lan Jefferson

Cynthia Suero-Gabler

STAFF & GUESTS:

Henry Foster III, Program Manager, Equal Opportunity Contracting

Claudia Abarca, Supervising Management Analyst, Equal Opportunity Contracting

Christian Silva, Senior Management Analyst, Equal Opportunity Contracting

Damian Singleton, Senior Management Analyst, Equal Opportunity Contracting

Cheryl Smoot Stadille, Associate Management Analyst, Equal Opportunity Contracting

Staff indicated the following be added to Item 4 of the agenda - Memorandum of Law – [The Legality of Appointment Language in San Diego Charter Section 42](#) of the agenda:

“This memorandum is listed for informational purposes only because similar concerns may arise from the Commission’s request for revisions to SDMC §26.16(b).”

APPROVAL OF:

Meeting Minutes of December 2, 2015 ([Attachment A](#))

Minutes approved unanimously (5/0)

Chair Warner requested for the following sentence to be removed under Item 5 - Staff Updates (second paragraph from bottom of page):

- Original Comment: Chair Warner also noted that there are some constraints regarding preference programs in State law.

Chair Warner asked for the following revisions to be made to the minutes under Item 5 - Staff Updates (last paragraph on page):

- Original Comment: Chair Warner noted that purchase orders are one step closer than a contract.

Revised Comment: Chair Warner noted that purchase orders are one step closer to knowing contract award amounts.

Motion made by Commissioner Jester to approve the modified December 2, 2015 Meeting Minutes, seconded by Commissioner Jones. Minutes approved unanimously.

- Vice Chair Custodio announced her presence for the record.

INFORMATIONAL ITEMS: Citizens' Equal Opportunity Commission establishment language modification, SDMC §26.16(b) Update

- City Attorney's legal review of the Municipal Code to add Women and Disabled Veterans to section 26.16(b) and legal review of currently listed groups represented on the Commission.

- Status of Legal Memorandum from the City Attorney's Office regarding legal concerns with Municipal Code section 26.16(b).

- Memorandum of Law – [The Legality of Appointment Language in San Diego Charter Section 42](#)

- Chair Warner indicated this was issued to the Charter Committee. Commissioner Perez asked what other commissions would be impacted and how many commissions have appointment requirements based on race and gender. Staff indicated they did not have information at this time.
- Vice Chair Custodio asked if this issue arose in the past. Staff indicated that they would have to defer to the Office of the City Attorney.

INFORMATIONAL ITEMS: Status Update: [Follow-Up letter to Mayor from Commission \(dated 11/4/15\)](#) addressing recommendations regarding disparity study, municipal code update and bidding and contracting processes in [previous correspondence \(dated 3/4/15\)](#).

- Office of the City Attorney Report to the Budget & Government Efficiency Committee – [Recent Case Law and the City's Use of Other Agencies' Disparity Studies](#)

- Chair Warner indicated that she had not received a response from the Mayor's Office. Staff indicated that a response is in process and once finalized will be distributed accordingly.

INFORMATIONAL ITEMS: Precluded participation contract clause concerns for Architectural and Engineering Consultant Contracts raised by Small and Local Business firms during [11/4/15 Meeting \(Non-Agenda Public Comment\)](#)

▪ Memorandum of Law – [Applicability of Conflict of Interest Laws to Consultants Working on the Capital Improvement Program](#)

- Chair Warner provided an overview of the precluded participation clause in consultant contracts. Chair Warner indicated that it was their (the committee) intent to have a City Attorney present to explain the memorandum that was issued which says any consultant firm involved in programming or pre-design cannot participate in work after that. What discipline would preclude a firm from participating? Chair Warner wanted to discuss why this is a requirement at all? (Opens up to public discussion... Steve McPartland)

NON AGENDA PUBLIC COMMENT: Steve McPartland, TSAC Engineering

- Mr. McPartland raised concerns regarding the impacts of the precluded participation clause for his certified SLBE firm. Mr. McPartland indicated that he previously came before the commission in November 2015 to voice concerns regarding the item. Mr. McPartland indicated that his firm was preparing for tasks 7 and 8 for the Miramar and Morena Pipeline projects as a subconsultant to MWH for “drafting services.” Mr. McPartland's indicated his firm was also on Brown and Caldwell's team for the final design of the San Vicente Pipeline project and was later notified that his firm is precluded from participating on the project. Mr. McPartland indicated that based on the legal memorandum provided, he believes his firm did not fall under the precluded participation clause and is seeking help from the commission to see how this issue can be rectified and maintain his participation on the Brown & Caldwell team.
- Chair Warner indicated that she is looking for more specifics from the City regarding disciplines that would not be precluded from post pre-design work. Chair Warner noted the City Attorneys' Office used the case of the Torrey Pines Golf Course as their basis and in the opinion of the City Attorney it noted that some disciplines would not be precluded from participation after pre-design work is completed. Chair Warner indicated that the disciplines should be made available to the public.
- Mr. McPartland noted that when Brown and Caldwell made their proposal to the City, his firm had a contract, but had not started any work on that contract yet.

NON AGENDA PUBLIC COMMENT: Rick Yeager, RF Yeager Engineering

- Mr. Yeager raised concerns regarding the impacts of the precluded participation clause for his certified DVBE/SBE/SLBE firm. His firm was awarded an as-needed contract with Brown and Caldwell in 2014 for corrosion engineering services - well before the PureWater Program started. In 2014, Brown and Caldwell called Mr. Yeager for pre-design work on the North City to San Vicente Pipeline. The work consisted of Mr. Yeager providing a report on utility research, driving the alignment, and potential instances of stray current interference beyond the pipeline. Mr. Yeager noted that later the RFP for pre-design work for the PureWater Program came out stating anyone doing work on the project may be precluded from future design work. Mr. Yeager was later contacted to be on a design team which he declined, due to the

possibility his firm may be precluded from future design work. Once the RFP for the design work for the North City to San Vicente pipeline was released, RF Yeager was precluded due to the release of Brown and Caldwell's pre-design report which included Mr. Yeager's report from the as-needed contract. Mr. Yeager expressed concerns over being precluded from PureWater work, when his firm's initial involvement was not with PureWater teams but with an as-needed team prior to the release of PureWater RFPs. Mr. Yeager has requested for the commission to recommend the review of the precluded participation process for awarded contracts.

NON AGENDA PUBLIC COMMENT: Subhash Patel, Beyaz & Patel, Inc.

- Mr. Patel indicated that his firm was also impacted similarly to the previous speakers.
- Chair Warner asked Mr. Patel if he had spoken with the prime contractor his firm normally works with to see if they were aware of this legal opinion and how it affects future contracting. Staff indicated that all Memoranda of Law are public record and are available on the City Clerk's website.

NON AGENDA PUBLIC COMMENT: Tiong Liem, Allied Geotechnical Engineers, Inc.

- Mr. Liem thanked the commission for bringing this issue to the attention of the City Attorney's Office. Mr. Liem indicated that there are still questions that need to be addressed regarding specific disciplines.
- Chair Warner led a discussion regarding the commission's interpretation of the memo. Commissioners raised concerns regarding the applicability of the precluded participation clause if small businesses are not operating as government officials. Staff indicated that the commission would need to send any requests to staff and they would be forwarded to the appropriate party.
- Commissioner Jones suggested having the City Attorney present at CEOC to explain the memo and take Q&A from those who have concerns. Commissioner Jones also indicated Public Works should be present to discuss how the City will implement the City Attorney's determination.
- Commissioner Jones inquired as to the award status of the contracts and expressed concerns regarding firms missing potential contracting opportunities.
- Commissioner Jones suggested capturing the process for hiring consultants in the City's Administrative Regulations.

INFORMATIONAL ITEMS: Status Update: [Letter to Human Resources Director \(dated 11/4/15\)](#) in response to previous correspondence from [Human Resources Director to Commission \(dated 10/8/15\)](#).

- Chair Warner asked staff to provide a status update regarding this item. Staff indicated they did not have any information at this time.

- Henry Foster asked Chair Warner if she received recent case law about the City's use of other cities disparity studys. It has to do with market area and has to be specific to your market, therefore for example we **cannot** use Airport's disparity study data.

STAFF UPDATES: Christian Silva, Senior Contract Compliance Officer, Equal Opportunity Contracting ([Attachment B](#))

- Staff provided an update on the SLBE program, contracting updates, training sessions, and outreach updates. Staff referred commissioners to the upcoming MACC outreach events.
- Staff indicated that Mr. Singleton will be taking over the SLBE certification specialist role, Diversity Works newsletter, and provide support to the commission.

CHAIR ANNOUNCEMENTS: None.

SUBCOMMITTEE REPORTS:

Data Subcommittee

- Vice Chair Custodio (Subcommittee Chair) indicated that the monthly subcommittee meeting was rescheduled. The subcommittee is currently looking at the equal opportunity programs of other jurisdictions of similar size/demographics.

Business & Political Leadership Subcommittee

- Commissioner Perez (Subcommittee Chair) indicated that the subcommittee will meet next Friday and provide updates at a later time.

Public Outreach Subcommittee ([Attachment C](#))

- Chair Warner noted that the subcommittee has been communicating with the Public Works Department to schedule a meeting to advise on outreach. Staff indicated that EOC will
- Henry Foster – EOC will be happy to attend.

Ad Hoc Annual Report Subcommittee ([Attachment D](#))

- Vice Chair Custodio indicated that the subcommittee has an initial draft of the annual report and is waiting for additional data to be provided. Chair Warner noted that an operational section was added to the report outline.

Motion made by Commissioner Ortiz to adjourn the meeting, seconded by Commissioner Jester.

ADJOURNMENT: 7:14 P.M.

NEXT MEETING: March 2, 2016

MATERIALS PROVIDED:

- [Attachment A](#) – December 2, 2015 Meeting Minutes
- [Attachment B](#) – Equal Opportunity Contracting Program Update – February 2016
- [Attachment C](#) – Public Outreach Subcommittee Update
- [Attachment D](#) – Ad Hoc Annual Report Subcommittee Update