



THE CITY OF SAN DIEGO

## CITIZENS' EQUAL OPPORTUNITY COMMISSION

### MEETING MINUTES

Wednesday, March 2, 2016  
6:00 – 8:00 p.m.  
City Administration Building  
Council Committee Room  
202 C Street – 12th Floor  
San Diego, CA 92101

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**CALL TO ORDER at:** 6:23 p.m. by Chair Warner

**ROLL CALL:**

Laura Warner, Chair  
Kristine Custodio, Vice Chair  
Lan Jefferson  
Rafael Perez  
Cynthia Suero-Gabler (arrived late)

**EXCUSED:**

Monte Jones  
Susan Jester  
Dan Ortiz

**STAFF & GUESTS:**

James Nagelvoort, Director, Public Works –Engineering  
Kristina Peralta, Director, Purchasing & Contracting  
Greg Halsey, Deputy City Attorney, City Attorneys  
Jon Dwyer, Deputy City Attorney, City Attorneys  
Henry Foster III, Program Manager, Equal Opportunity Contracting  
Claudia Abarca, Supervising Management Analyst, Equal Opportunity Contracting  
Damian Singleton, Senior Management Analyst, Equal Opportunity Contracting  
Cheryl Smoot Stadille, Associate Management Analyst, Equal Opportunity Contracting  
Evelin Mata, Management Trainee, Equal Opportunity Contracting  
Bridget Riley, Consultant-SAP, P2P, EPI Consulting

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**APPROVAL OF:** Meeting Minutes of February 2, 2016

- Chair Warner stated the meeting minutes will be approved at the next month's CEOC meeting.

**NON AGENDA PUBLIC COMMENT:** None

**MEMORANDUM OF LAW – [Applicability of Conflict of Interest Laws to Consultants Working on the Capital Improvement Program](#)**

- Mr. Foster clarified that the intent was to have Mr. James Nagelvoort, Public Works Director, and the City Attorneys attend next month's CEOC meeting however, both parties are attending this meeting to address SDMC §26.16.
- Mr. Nagelvoort introduced himself as the Director of Public Works/ City Engineer and stated what the role of the Public Works Contracting Department. Mr. Nagelvoort gave overview on California Government Code §1090 and recent court decision that changed the way the municipalities interpreted the ruling. Mr. Nagelvoort stated that the ruling ensures competition in awarding contracts to contractors and consultants. The ruling also suggests that if a consultant was hired to perform services during the early stages of a project (e.g. planning level document), that entity cannot be in a position to influence the awarding agency or have an advantage in the next phase of the project. Mr. Nagelvoort stated that in the past, if the City hired a consultant for a planning level report and utilized their work product to convert into a design project, the City would make it public (publish it) for a specific amount of time. This was staffs way of complying with §1090 and allowing consultants to continue to participate on later stages of a project. Mr. Nagelvoort noted that §1090 changed that practice in that consultants are not supposed to be in a position to have any influence. The City Attorneys' Office provided Mr. Nagelvoort a memo to increase staffs understanding of the City Attorneys' Office interpretation of the law.
- Mr. Nagelvoort stated that the City wrote the Fair Political Practice Commission over the Torrey Pine Golf Course project regarding a firm that was developing the General Develop Plan (GDP) for the golf course. Mr. Nagelvoort stated staff did not know how to interpret this, so they prepared a report detailing Mr. Michelson's role and the role of the landscape architect firm, Schmit Design, and whether they would be eligible to compete for the next phase of the golf course design. Mr. Nagelvoort stated that the Fair Political Practice Commission believed Mr. Mickelson did play a major role influencing the design of the golf course. Mr. Nagelvoort stated subs have contacted him inquiring if the City as an agency can come up with a ruling to say they are exempt, which the City cannot do because this is a State law. Mr. Nagelvoort stated that the City Attorneys' memo to him and his staff is a public document available to the public.
- Chair Warner noted concerns brought forward by technical professions (surveying and lab work) whose disciplines don't define future projects and suggests defining those disciplines. Also, Chair Warner noted that there are subs who are not in the room with the client and are in no position to influence any decisions. Primes are

excluding small business sub because they do not know what disciplines are precluded.

- Mr. Nagelvoort stated his agreement with Chair Warner's sentiment but cannot offer a definition of an exemption where one would not be subject to State law. Mr. Nagelvoort stated staff has reached out to City lobbyist due to concerns that primes and subs are put in a position where they make more money in design than planning.
- Mr. Nagelvoort stated that there are firms that are assisting in putting together an EIR for a football stadium that cost a little over \$2 million and if a stadium were to become a reality at 1.3, the design contract could be worth approximately \$100 million and for \$2 million dollars those firms would not be able to compete. It's getting harder for the City to attract firms to give advice or give feedback during the early stages of a project because it can set them up to not be able to compete.
- Commissioner Jefferson raised concerns that the State law causes a conflict of interest by holding primes and subs to the same level with no gray area under State law.
- Mr. Nagelvoort stated it is still up to primes to determine if subs are at risk to Precluded Participation law.
- Chair Warner stated her understanding that the consultant's role is to provide recommendation to staff and political leaders and they make the decisions based on those recommendations. Mr. Nagelvoort stated that prior to June, this was staff's position. Mr. Nagelvoort referenced the Torrey Pines Golf Course project and Phil Mickelson's involvement as an example of there being a public process where public bodies and the community had final say on the conclusion of the final layout of the golf course. Mr. Nagelvoort noted there are entities and community groups that care about golf course design and had to be convinced of the final layout. Mr. Nagelvoort stated the feedback he received from the Fair Political Practice Commission is that Mr. Mickelson, because of his stature, had influence over the layout.

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

- Mr. Liem stated that the precluded participation clause would not only affect consultants but would also impact the pool of SLBE/ELBE firms that can participate in contracting with the City as a result of precluded participation. Mr. Liem noted that the last time he checked the website there were 7 certified SLBE/ELBE geotechnical firms, including his firm. If these firms are now not allowed to participate on post pre-design or preliminary planning work there will be no geotechnical firms for the City to contract with. Mr. Liem noted that he has been doing work for the City for the past 35 years and this is the first time this situation has come up.
- Mr. Nagelvoort stated his department is discussing the idea that instead of breaking contracts up by phases (planning, design, construction, management), how would it look to hire firms to perform cradle-to-grave. If you procure firms for the entire project there is no violation or ineligibility to compete on later phases. The purpose for hiring someone for the planning phase is help the City put together the scope. The cradle-to-grave method puts staff in the position of having minimal information

on what the project is and Council will need to trust staff to manage the project for the duration. This method is not ideal but would keep the City in compliance with §1090.

- Chair Warner stated one of the advantages are minimizing the number of contracts being processed considering how long the awarding process is.

**MEMORANDUM OF LAW – [The Legality of Appointment Language in San Diego Charter Section 42](#)**

- Staff noted that Mrs. Lara Easton was reassigned and introduced Mr. Jon Dwyer as the reassigned attorney who will serve in Lara's capacity.
- Mr. Jon Dwyer introduced himself and Mr. Greg Halsey, who will discuss the memorandum of law.
- Mr. Halsey stated the Memorandum of Law indicates using race, national origin or sexual orientation as a factor in considering appointments to the commission would subject the City to liability and violate the Equal Protection Clause. Mr. Halsey stated the memorandum offers a recommendation of how the City Attorneys' Office believes the Commission can achieve their purpose of the original current appointment language in a manner which won't be applied in an unconstitutional fashion. Chair Warner asked what is unconstitutional about having representation from these classes? Mr. Halsey stated there is nothing unconstitutional and that he is only speaking of the appointment process.
- Commissioner Perez asked for clarification on whether a non-latino who is involved with a latino organization would be allowed to apply for the Commission? Mr. Halsey stated everyone would have to be eligible to apply.
- Commissioner Jefferson stated certain races and ethnicities were to be appointed to represent those community groups and that the Municipal Code was reworded. Mr. Halsey stated the Municipal Code was reworded to capture the same goal in a legal fashion. Chair Warner asked how it became illegal when it used to be legal? Mr. Halsey stated the case of Conner vs Lee with the California Supreme Court in the 1990s changed that. Chair Warner stated the goal is to have a Commission that represents the diversity of the community which should be comprised of people of those communities to represent them. Additionally, there are four open spaces on the Commission that the Commission would like to see used to appoint a woman and a Disabled Veteran. The remaining positions could potentially be filled by an at-large member or someone from a group that felt underrepresented.
- Commissioner Custodio asked how can there be CEOC when there is no guarantee of a diverse representation. Commissioner Custodio read the contracting statistics and questioned what the Commission would look like with different Commissioners?
- Chair Warner asked if Mr. Halsey had conducted any benchmarking with other cities? Mr. Halsey stated he has looked at the appointment language of San Francisco and Los Angeles and that their language does not say you must embody the characteristics of the community you represent. Chair Warner noted that the Commission could

potentially be comprised of a panel of all white males who say they represent communities of color, women, gays, lesbians and disabled veterans.

- Commissioner Custodio noted that because the Commission wanted to add verbiage to the appointment language to cover veterans and women, the City Attorneys' Office has analyzed the appointment language for issues which potentially put the City at risk.
- Commission Jefferson asked if the City Attorneys' review of the appointment language was a result of potential liability/lawsuit or are they seeking to change the appointment process?
- Staff explained the City Attorneys' role in providing legal analysis of the appointment language and how the next phase in the process between City staff and the Executive Team deciding how to proceed.
- Commissioner Perez asked about the process to fill current vacancies?
- Staff noted that the memo is trying to alleviate the perception that appointments based strictly on race opens the City to legal liability. Staff noted the duties and responsibilities of the Commission to advise City Council and the Mayor on their recommendations.

#### **PURCHASE TO PAY (P2P) SAP PROJECT UPDATE**

- Kristina Peralta, Director of Purchasing & Contracting, provided an update to the Commission. Kristina Peralta discussed the P2P project (procure to pay), which is the overhaul project within SAP. The Heron Group evaluated the City's processes and provided the Heron Report which concluded the City's need to conduct business reprocessing to make things easier for its internal customers and ease the City's ability to provide useable data. Mrs. Peralta stated an audit was conducted to examine the City's contracting practices and oversights. A GAP analysis was recommended by the Heron Group which was conducted to detail the City's business processes. These findings concluded that an overhaul is necessary. The City is utilizing EPI Consulting in an 18-month process to address the underlying issues. The benefits of this overhaul would adapt the City's processes to business' needs, improved data, and better user experience for the City's customers. One of the projects was completed in December 2015.

There are two future scheduled releases:

- August 2016 and November 2016
- Bridget Riley stated during the second release these will be the scope items:
  - 1. Realigning Vendor/Partner association
  - 2. Purchase/Release approval process
  - 3. Delivery Addresses for goods and services delivery
  - 4. Enable emailing to supplier of the purchase order
- Mrs. Peralta defined AREBA as a cloud-solution software package that supports SAP which will be used to ensure bidders/vendors are registered with the City and if they are a special interest (SLBE, Minority-owned, Woman-owned, etc.). The contract

workspace in AREBA will take the place of PlanetBids however, the NAICS and NIGP codes will still be use for sourcing.

- Chair Warner asked how this software interfaces with PlanetBids?
- Mrs. Peralta noted there will be a vendor enablement team on AREBA's side and the City side to engage vendors who are already registered with PlanetBids and to reengage them to register with the City. Currently, PlanetBids does not interface with SAP. There is an interface available to allow Prism and AREBA to speak to one another.
- Commissioner Sureo-Gabler asked for clarity about the debarment process? Mrs. Peralta stated that the City Attorney is working on new municipal code language. Mr. Dwyer interrupted Mrs. Peralta to inform the Commission that debarment and revisions to the AR were not listed on the agenda and would need to be discussed at a future meeting.
- Chair Warner asked Mrs. Peralta about the cost of the AREBA overhaul? Mrs. Peralta stated that she did not know that information and that the cost was not carried on P&C's budget, but was a component of the IT department's budget. Mrs. Peralta indicated that she could find out the cost and provide that information to the Commission.
- Chair Warner stated that the Commission would like to know how much money goes to subconsultants/ subcontractors on a quarterly basis? Mr. Foster stated that the information currently available is the amount of money received by prime contractors not subcontractors. Chair Warner stated she would like to know specifically what SLBE's are being paid? Mr. Foster stated that the City's financial system currently only tracks payments to prime contractors which is what the City can provide the Commission.
- Chair Warner stated SANDAG can provide a breakdown for subcontractor/subconsultant payments. Staff asked Chair Warner to send the information she has received from SANDAG. Staff will analyze the information to ensure the Commission is requesting the same data from the City.

**STAFF UPDATES:** Damian Singleton, Senior Management Analyst, Equal Opportunity Contracting

- Staff provided an update on SLBE Program, contracting updates, training sessions and outreach updates.

**CHAIR ANNOUNCEMENTS:** None

**DATA SUBCOMMITTEE**

- Vice Chair Custodio stated the subcommittee had a discussion about the disparity study and seeks clarification from the City Attorneys' Office about the language in the Memorandum of Law. Vice Chair Custodio stated that the subcommittee performed comparisons between other municipalities and how they ran their Equal Opportunity



Contracting Programs (San Jose, Philadelphia) in comparison to San Diego. Mr. Foster requested the subcommittee email him their questions pertaining to the Memorandum of Law. Vice Chair Custodio stated that the City Attorneys' Office informed the Commission that they cannot use another city's disparity study.

#### **BUSINESS & POLITICAL LEADERSHIP COMMITTEE**

- Commissioner Perez provided an update to the Commission. The subcommittee expressed concern with the precluded participation issue and expressed concern with the pending City Attorney letter regarding the Charter. Commissioner Perez asked about an updated list of the Commissioners that are up for renewal. Mr. Foster stated that that information is available on the City website.
- Commissioner Perez expressed new goals: (1) resolve preclusion issue(s), (2) find a way to keep diversity on the Commission after the new memo and to have (3) regular attendance at Budget & Efficiency Committee Meetings. The subcommittee met with Councilman Gloria's office to express concerns about the preclusion clause. Commissioner Suero-Gabler provided an update on the meeting with Councilman Gloria's office about the preclusion clause. Councilman Gloria's office advised to follow-up on this issue as a legislative item at the State level, and to seek assistance from former CEOC Chair, Assemblywoman Shirley Webber.

#### **AD HOC ANNUAL REPORT SUBCOMMITTEE**

- Commissioner Jefferson provided an update to the Commission. Commissioner Jefferson stated the subcommittee focused on two things during their meeting: (1) to continued drafting the CEOC Annual Report and (2) with the new Municipal Code language, how does it affect CEOC Commissioner? How can CEOC complete the annual report without fully knowing its purpose?

#### **PUBLIC OUTREACH SUBCOMMITTEE**

- Commissioner Suero-Gabler provided an update to the Commission. In an effort to understand what Public Works and Purchasing and Contracting are doing for public outreach and small business participation, the subcommittee requested that departments provide a calendar of events that identify what departments and divisions have planned for outreach this year. The subcommittee met with the Public Works Department and City staff to discuss the subcommittee's recommendations, which were provided to City staff by letter.
- Chair Warner noted that the subcommittee thought there was a person assigned to comprehensively look at the outreach to small business however, the individual the subcommittee met with are only doing SLBE meetings on a quarterly basis. Chair Warner stated a comprehensive approach would be better.
- Staff reminded the Commission to follow procedure when distributing correspondence on behalf of the Commission. Any correspondence must be listed on the agenda and allow the Commission and the public an opportunity to provide feedback on the issue(s).

**ADJOURNMENT:** 7:15 p.m.

**NEXT MEETING:** April 6, 2016