



THE CITY OF SAN DIEGO

## CITIZENS' EQUAL OPPORTUNITY COMMISSION

### MEETING MINUTES

Wednesday, March 7, 2018  
6:00 p.m. – 8:00 p.m.  
City Administration Building  
Committee Room  
202 C Street – 12th Floor  
San Diego, CA 92101

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**CALL TO ORDER** at: 6:09 p.m. by Vice Chair Jefferson in absence of Chair Custodio.

**ROLL CALL:**

Lan Jefferson  
Monte Jones  
Dan Ortiz  
Rafael Perez  
Susan Jester  
Beth Kransberger  
Tony Teravainen (arrived at 6:27 p.m.)  
Kristine Custodio (arrived at 6:42 p.m.)

**STAFF & GUESTS:**

Claudia Abarca, Program Manager, Equal Opportunity Contracting  
Damian Singleton, Senior Management Analyst, Equal Opportunity Contracting  
Martha Rivera, Clerical Assistant II, Equal Opportunity Contracting  
Fritz Ortlieb, Deputy City Attorney, Office of the City Attorney  
James Chen, Senior Civil Engineer, Environmental Services

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**APPROVAL OF:** Meeting Minutes of February 7, 2018

**Motion by Commissioner Jester, seconded by Commissioner Perez, to approve Meeting Minutes of February 7, 2018. Passes by the following vote:**

**Yay:** Lan Jefferson, Rafael Perez, Susan Jester, Monte Jones, Beth Kransberger, Dan Ortiz

**Nay:** (None)

**Recused:** (None)

**Not Present:** Commissioners Teravainen and Custodio (arrived late)

**Abstain:** (None)

**NON-AGENDA PUBLIC COMMENT:** None.

**Item 4: DISCUSSION ITEMS**

In the interest of time, Item 5.C. was moved to the first discussion item.

**5.C. Electrical Minority Workers Caucus (EWMC) • Steven Steppe**

- EOC Program Manager, Deputy City Attorney and Representative from Environmental Services answered questions and explained the Cooperative Agreement Mr. Steppe had brought to the commission in previous CEOC meetings.

- Ms. Abarca answered Mr. Steppe's submitted questions:

- **Question 1: Can we see the outreach plan submitted with the SunEdison/Onyx contract?**

Ms. Abarca stated that Equal Employment Opportunity (EEO) Plans are not released because information in the EEO Plan is considered confidential and proprietary.

- **Question 2: Can you see the record of outreach that was done by the contractor?**

Ms. Abarca explained that because of the type of contract that this was, a cooperative contract from a larger State-wide contract, the City does not have any of that documentation available for Mr. Steppe.

- **Question 3: Can we see who is doing the work and the certified records of who worked on the project including certified electricians on the project?**

Ms. Abarca said that the City can provide that information, however, the request needs to be made through the City's central location which is the NextRequest system. Mr. Steppe stated that he had made the request 3 weeks prior. Ms. Abarca was unaware of the request, but had reviewed payroll records and provided the following information:

- Helix Electric, the contractor installing solar panels has 16 employees listed, of which 10 are journeyman that are certified electricians by the State of California. The rest are apprentices that were registered as such with the State of California.
- To date, total hours spent on the contract are 6,261. Of those hours 4,192 are for journeyman, and 2,069 are for apprentices.

- **Question 4: Why is the contractor hiring staff that is not local?** Mr. Steppe had indicated that he had spoken with a foreman from the Malcolm X Library that stated that he was from Las Vegas, NV. The foreman stated that he was with a temporary crew from a temp agency from Temecula, CA.

- Ms. Abarca stated that the City cannot dictate means and method and what the hiring practices are for a company. There is no project-labor agreement or local hire requirement in place for this contract. If a company decided or elected to hire through a temp agency, the City does not have a reason to tell them they cannot do that. That is for any contract, not just the contract Mr. Steppe is inquiring about.
- Mr. Steppe requested to see a copy of the RFP that was sent to SPURR for bidding. Ms. Abarca, Mr. Ortlieb, and Mr. Chen stated that the website of the joint powers agency that ran the underlying master bid for this project had a link where a request can be made for access to that information. It is not publicly available, but it is assumed that it could be produced if requested. Mr. Steppe replied that he had already received part of the RFP.
- Mr. Ortlieb provided a general overview of how the City entered into this contract in response to questions from the Commission from the February 7, 2018 meeting.
  - Mr. Ortlieb stated that this contract is a Joint and Cooperative Purchase Contract. Under the San Diego Municipal Code, it is not a Public Works contract for construction, reconstruction or repair of a public building. The facilities that are being constructed are privately owned, they are owned by the company not the City. The City is not contracting for construction work, it is contracting for services. The services that are provided under this agreement is the provision of electricity. The contract was a Joint Cooperative Contract through the Schools Project for Utility Rate Reduction (SPURR). This is a joint powers authority agency that is based in Northern California. It is an amalgamation of school districts that created a master contract that was made available to other school districts and public agencies in California.
  - The project was bid on by having a quote submitted to SPURR by SunEdison, LLC. dba SunEdison Government Solutions. The bid included prices for a kilowatt hour of electricity. The bid was based on the price for electricity, not the price of the facility that generates electricity. Prices were bid to SPURR for different regions in the State based on labor conditions in the regions. The program was set up by SPURR specifically to allow other agencies to avail themselves of the bids.
  - The Environmental Services Department learned of the availability of this contracting mechanism. The Municipal Code does provide for joint and cooperative purchasing. Due to the Climate Action Plan for Council, there was some urgency and desire to move the contract along and get renewable electricity generated on City facilities as soon as possible; so it was decided to use this joint cooperative contracting mechanism. The typical bidding process was not followed for a City contract.

- Commissioner Jones received confirmation that the contract was originally with SunEdison Government Solutions. DCA Fritz Ortlieb confirmed and explained that the parent company, SunEdison, went bankrupt last year (2017). In lieu of defaulting them, SunEdison brought another developer, Onyx Blackstone, to salvage the project. Onyx agreed to perform the project on the same terms and agreed to pay some liquidated damages for the delays that were incurred by the default of their predecessor.
- Commissioner Perez expressed the concerns for community outreach for the contract with Onyx Blackstone. Ms. Abarca clarified that the document that Mr. Steppe has referenced indicating a voluntary goal requirement was produced by her office and is not a part of the actual agreement. Staff inadvertently put the wrong information which may be causing confusion.
- Commissioner Jones requested clarification as to whether or not there was a goal mentioned in the contract. Ms. Abarca stated that she did not see one and Mr. Ortlieb stated that he was not aware of one. He confirmed that there are requirements for Prevailing Wage because even though these are private systems, Labor Code does require payment of Prevailing Wage. The City Anti-Discrimination language is also in the contract, and is a requirement. Ms. Abarca reiterated that the City did not put this contract out to bid, it was put out by another agency.
- Commissioner Jones requested clarification as to why in a joint project the City and its Municipal Code cannot support some type of goals that can be put in the project. Mr. Ortlieb explained that because the project was bid with the SPURR and not a contract that the City bid out on its terms. It was bid on the SPURR JPA and on their terms.
- Commissioner Kransberger commented that the Commission is trying to figure out appropriate mechanisms to ensure that the aspirational spirit and intent of opening up business that the City does to women and minority owned businesses in real, actual robust ways – not in name only.
- Mr. Ortlieb responded to Commissioner Kransberger by reiterating that the project in question was part of a cooperative contract and wasn't bid by the City of San Diego. Mr. Ortlieb also advised that for future projects and contracts, the Commission would want to make recommendations to the Council that more attention be given to the various Council policies for outreach on joint cooperative contracts.
- Ms. Abarca stated that the City doesn't use very many cooperative agreements compared to other procurement vehicles. She reiterated that for this contract, the City is **not** paying for the installation of solar panels. The City is paying for the energy that gets generated through those panels. Even though this is a large contract and there are questions about opportunities, and subcontracting opportunities, the City is not paying Helix or the other subcontractors for their work at this point and time. What the City **will** be paying for is the energy that gets produced through those panels – at a discounted rate.

- Mr. Ortlieb replied by clarifying that the high dollar value that was cited was for a lot of electricity over 20 years.
- Mr. Steppe commented that the City generated the RFP for the contract and sent it to SPURR. Ms. Abarca responded to this statement and indicated that the RFP was not issued through the City of San Diego, but through SPURR. Mr. Ortlieb clarified that in this instance SPURR had done the bidding well before the City decided to join the agreement.
- Mr. Steppe inquired as to how SPURR knew what to bid, to which Mr. Ortlieb replied that SPURR bid the project as a regional approach where bid pricing was solicited for different regions.
- Mr. Steppe asked how did SPURR know what the City wanted (what buildings, where, how much). Mr. Ortlieb explained that it was a generic contract with a generic price that's available on a regional basis.
- Mr. Steppe cited a document that was not available to Ms. Abarca or Mr. Ortlieb that stated a bid requirement was that whoever bid on the contract had to be a contractor and SunEdison was not a contractor. Mr. Ortlieb responded that SunEdison bid not as a contractor but as a developer.
- Ms. Abarca explained that the procurement was done through SPURR, including the request for proposal. Mr. Steppe stated that there was a contract signed by the City, which was agreed to by Ms. Abarca. She explained that the City did not issue an RFP to SPURR, that it was SPURR that issued the RFP. Proposals were then submitted back to SPURR, afterwards SPURR made the decision to enter into an agreement with SunEdison.
- Mr. Ortlieb agreed with Ms. Abarca and added that SPURR in creating their program, made it available to any other agency in the State; so that other agencies in the State could accept the bid that they had received and pricing based on the region would apply. Mr. Steppe stated that he received contradicting information from SPURR that removed SPURR from the agreement leaving only the City and the firm. Mr. Ortlieb and Ms. Abarca stated that they do not have the information that Mr. Steppe was given and could not comment on it.
- Commissioner Jefferson requested that Staff review the documents and information that was provided to Mr. Steppe by SPURR and report back to the Commission. She also requested that the information Mr. Steppe referenced be sent to the Deputy City Attorney's Office. Ms. Abarca agreed to the requests.
- Commissioner Ortiz asked who does maintenance on the systems, Mr. Ortlieb replied that Onyx Blackstone does since they are the company that owns them.
- Commissioner Perez expressed concern that even though it is a simple purchase of power by the City, these facilities are sitting on City property. The concern is that the project didn't go through the proper channels that typically have assurances for a lot of participation in the community.

- Commissioner Jester stated that it sounds like an unusual situation that was further complicated by the awarded company going bankrupt and another company entering into the agreement. She proposed that the Commission's duty was to follow up with the new information that Mr. Steppe will provide Staff and the DCA and to recommend to the Council some type of ordinance or rule setting so that in the event of a cooperative agreement and in the event that an awarded firm goes out of business there are rules for the next firm to follow. Commissioner Jester stated that the Commission is addressing the issue of the Equal Opportunity aspect.
- Ms. Abarca replied that the Equal Opportunity Contracting requirement for Non-Discrimination and Equal Employment Opportunity was in the contract that the City signed with SunEdison.
- Mr. Ortlieb added that the Environmental Services Department has plans for further projects of solar panels on City roofs and that this issue has their attention. The next phase of this project for City facilities to get solar distributed generation installed will have a City run bid. All the usual requirements initiated by a City bid will apply.
- Commissioner Jefferson stated that the Commission is concerned that there was no transparency for the community on the details of this agreement. Mr. Ortlieb said he could not speak for management decisions that decided to take the cooperative approach for this phase.
- Commissioner Perez inquired as to the percentage of Phase 1 would be for ultimate coverage. Mr. Chen said 19 sites are currently 4 megawatt size. Mr. Ortlieb said there has not been a decision as to how large Phase 2 will be versus Phase 3. Mr. Chen said as of now Phase 2 will be 10 sites, all parking lots due to roof issues. The City will buy the power from the developer for 20 years. The City considered a better deal with the second firm because Onyx lowered the PPA (Power Purchase Agreement) rate and agreed to pay the City liquid damages based on the original completion date.
  - Commissioner Jones asked if Onyx Blackstone was selected for Phase 2. Mr. Chen said no, there will be a brand new RFQ issued by the City.
- Commissioner Jones stated that even though there is no control as to which subcontractors are hired by primes, it is disappointing that there are a lot of qualified firms in the City that can complete the work yet there are firms coming in from other cities. Ms. Abarca reiterated that Helix Electric is from San Diego and half of the staff on payroll records live in San Diego.
- Commissioner Ortiz requested a list of the cooperative contracts and the size of the projects. Ms. Abarca said she would request further information on this.

- Commissioner Teravainen asked for clarification as to why an RFQ was not done for Phase 1 and will be done for Phase 2. He also inquired as to how much time was saved in entering into the cooperative agreement. Mr. Chen replied that there was a sense of urgency to complete Phase 1 due to several factors which led to ESD utilizing the SPURR program. Mr. Chen indicated that about six months were saved in choosing the SPURR agreement.
- Commissioner Teravainen asked if the SPURR process would be used again if it was less time consuming. Mr. Ortlieb replied that some of the pressures from Phase 1 that motivated ESD to move along quickly are no longer an issue for Phase 2.
- Commissioner Teravainen asked what the preferred process was for a project. Mr. Chen replied that if there is time, ESD would prefer to do an RFP because using a cooperative agreement gives less choices for a developer. The City can choose the developer of its choice if it issues the bid directly. Mr. Ortlieb replied that some of the issues that have been brought before the Commission are reasons why the City would want to do its own process and have it tailor fit the contract better rather than generically provided through a cooperative joint powers agency.
- Commissioner Teravainen asked what authorization was required to go through the cooperative process. Mr. Ortlieb replied that an Ordinance from the Council was required because it exceeded five years.
- Chair Custodio requested that this item remain on the agenda for the April 2018 after the additional information has been reviewed.

**GUEST SPEAKERS:** Invited members of the community representing various groups.

~~A. Hispanic Chamber of Commerce (Guest Speaker)~~

- ~~Juan Carlos Hernandez, Chairman of the Board – Not Present~~

B. Greater San Diego Business Association (GSDBA) • Barbara Blake, CEO

<http://www.gsdba.org/pages/AboutUs>

- Ms. Blake introduced herself as the CEO for the GSDBA.
- The GSDBA was founded in 1979 and currently has 573 members representing 328 businesses.
- Approximately 25% of GSDBA membership are Ally business owners
- Ms. Blake provided information about several milestones related to GSDBA over the last 18 years.
- Ms. Blake spoke about the over 150 corporate partners that have spent hundreds of millions of dollars with certified LGBT Business Enterprises throughout their supply chains. Some of the companies include:
  - IBM, Wells Fargo, JPMorgan, Chase & Co., Motorola, Travelport, Intel, Wyndham Worldwide, American Airlines, American Express, EY, Aetna, Citi

- Ms. Blake stated that in 2015, San Diego County LGBT Consumers' "buying power" was \$9.15 Billion. She mentioned the "Buy LGBT San Diego" campaign.
- Ms. Abarca inquired about certification and if Ms. Blake was familiar with the certification process through CPUC and what criteria is required. Ms. Blake replied that an NGLCC certification is required, as well as income verification. Ms. Abarca asked about a fee for the certification, Ms. Blake replied that it is free of charge for anyone belonging to an LGBT chamber (such as GSDBA), otherwise the fee is \$400.

C. San Diego Regional Economic Development Corporation (SDREDC) • Eduardo Velasquez, Research Manager <http://sandiegobusiness.org/inclusivegrowth>

- Mr. Velasquez introduced himself and indicated that the SDREDC was primarily privately funded and non-profit whose mission is to promote the prosperity, global competitiveness, and inclusiveness of the regional economy.
- Mr. Velasquez stated that he was referred to the Commission by Bruce Mayberry from SDG&E who spoke at a luncheon event for SDREDC.
- Mr. Velasquez stated that low and middle income wage earners have not seen wage growth in the last couple of decades.
- Mr. Velasquez informed the Commission that they were selected by the Brookings Institution's Metropolitan Policy Program to participate in a six-month learning lab focused on inclusive economic development.
- EDC created goals with these stats that the region can pursue from an economic development perspective to:
  - Close the Minority Achievement Gap.
  - Equip Small Businesses to Compete.
  - Address the Affordability Crisis
- Commissioner Custodio inquired as to the availability of the presentation, which Mr. Velasquez confirmed that it is on the EDC's website.
- Commissioner Custodio inquired as to the EDC's involvement with supplier diversity. Mr. Velasquez replied that the organization is actively pursuing grant funding for programs that will connect suppliers to buyers locally.
- Commissioner Jefferson inquired as to whether Small Businesses are included in the steering committee. Mr. Velasquez replied that there are some small employers and non-profit organizations are involved. The Regional Chamber of Commerce is also involved with the EDC.
- Commission Kransberger inquired about participation from different education institutes. Mr. Velasquez replied that representatives from a few community colleges, UCSD, SDSU, Cal State San Marcos have joined the steering committee.
- Commissioner Teravainen requested clarification on the EDC's goal to "build a platform for collective action." Mr. Velasquez replied that the group of stakeholders from the steering committee will be responsible to establish measurable targets for the region and for the collective action required to achieve those goals.



D. National Latina Business Woman Association (NLBWA) – San Diego Chapter  
Angelica Velasquez, President

- Ms. Velasquez is currently serving her second term as President for the organization that was established in 2003.
- The goal of the organization is to develop Latinas. Currently the organization is extending an invitation to all women who have asked to join such as the African-American and Filipino communities.
- The initiative is to bring education and resources to women who want to do business; whether they are new businesses or established businesses owners looking to expand.
- Veteran women are also a focal point for the organization due to the difficulty of transitioning to civilian life.
- The organization has scheduled an event with PTAC, SBA, and Acción to bring all the organizations and resources together for members.
- NLBWA lowered its membership fees from \$150 to \$49.99 to make membership more open.
- The biggest issues for the organization is access to information and resources.
- The NLBWA has partnered with the Latino Professional Group, and the Hispanic Chamber of Commerce.

**ITEM 5: DISCUSSION ITEMS**

A. Council Committee Assignments

**Item tabled until April 2018 Meeting due to lack of time.**

B. Rosalind Winstead Non-Agenda Public Comment from February 7, 2018

- Ms. Winstead presented historical information to the Commission from the year 2000 that shows patterns and practices that have prevented success and the improvement of diversity of firms with which the City does business.
- Ms. Winstead stated that the San Diego Chapter of Associated General Contractors sued the City of San Diego in the early 1990s which resulted in the elimination of the Equal Opportunity Contracting Program.
- Ms. Winstead stated that the City's Equal Opportunity Contracting Program has historically been under resourced. The Staff has been challenged in monitoring equal employment opportunity efforts that mitigate discrimination in construction trades particularly; without data management systems and the support to do so.
- Ms. Winstead stated that in the City of Los Angeles when a prime contractor is paid they are required to pay its subcontractors within seven days. This component does not exist in San Diego. By withholding money from subcontractors, they can be put out of business. This is because small firms have cash flow issues. This problem has existed in San Diego for a very long time.
- In 2009, the San Diego chapter of the AGC sued the State of California / CalTrans, challenging its adoption of a race conscious goal to remedy documented contracting disparities. The case was lost, and the ruling was helpful to many firms in San Diego.

- In 2009, two councilmembers committed to commissioning a disparity study but no study has been commissioned. Ms. Winstead recommended an audit on the outreach program by the City Auditor.
- Ms. Winstead expressed the concern from the African-American community that there is a lack of African-Americans on construction job sites in San Diego. African-Americans must be allowed access to apprenticeship and other training programs that will give them opportunities to join the work force. Access to capital is also an important factor that is lacking.
- Ms. Abarca inquired as to the name of the program that the City of Los Angeles uses, to which Ms. Winstead replied that it is "Bid To Goal."
- Commissioner Custodio requested that this item be carried forward to the April agenda as an action item.

D. Council Committee Update • ED&IR: L. Jefferson, Tony Teravainen

• Budget: D. Oritz, Beth Kransberger

- **Item tabled until April 2018 Meeting due to lack of time.**

E. Executive Summary and Speaking Points for Discussion with Councilmembers

- **Item tabled until April 2018 Meeting due to lack of time.**

F. Inclusive Economics

- **Item tabled until April 2018 Meeting due to lack of time.**

G. Annual Report • Due September 2018

• Presentation to Council Committee October/November 2018

• Filed with City Clerk January 2019

- **Item tabled until April 2018 Meeting due to lack of time.**

J. Offsite CEOC Regular Meeting:

- Staff will provide available dates for the Central Library

**Item 6: ACTION ITEMS:**

A. Renaming of Subcommittees

- **Item tabled until April 2018 Meeting due to lack of time.**

**Item 7: STAFF UPDATES**

A. Damian Singleton, Equal Opportunity Contracting (EOC), Senior Management Analyst

- Mr. Singleton provided information on SLBE application summary for February 2018 (Attachment 1)
- Mr. Singleton announced his award as "Small Business Advocate of the Year" from the Black Contractor's Association (BCA)
- Ms. Abarca stated that the Public Works Department was adding a section to the Municipal Code related to public works contracts for operations and maintenance work.
- Ms. Abarca stated that EOC staff was working on creating a Restricted Bidding Program for A&E projects after a request by industry members was made. The program that will give priority to SLBE/ELBE firms for projects under \$500,000. Information will be provided to the Commission as the item develops.

- Commissioner Custodio inquired as to the By-Laws revision by the DCA, Ms. Abarca stated that the DCA is currently reviewing the EOCP's GFE and program updates. Commissioner Custodio requested email updates and requested the item be added to the meeting agenda for April.
- Mr. Singleton announced that there were no training events in the last month
- Mr. Singleton announced the upcoming outreach events:
  - March 22 with the Asian Business Association
  - March 8 with the North San Diego Small Business Development Center
  - March 7 with the City and County of San Diego
- Mr. Singleton announced the completed outreach events:
  - February 21 with the Black Contractor's Association
  - February 14 with the Council District 4 Office
  - February 8 with the North Small Business Development Center (SBDCC)
- The PWC – Upcoming Bid List was provided for City projects that will open to bidders. (Attachment 2)
- Commissioner Teravainen inquired as to the staffing efforts of the Equal Opportunity Contracting Program, Ms. Abarca informed the Commission that she has received authorization to fill three vacancies in her program.
- Commissioner Jester inquired as to the Chair of the ED&IR Committee. Mr. Singleton replied that he will provide that information to the Commission.

**Item 8: CHAIR ANNOUNCEMENTS** – None.

**Item 9: SUBCOMMITTEE REPORTS**

- Outreach (Commissioner Rafael Perez)
  - **Item tabled until April 2018 Meeting due to lack of time.**

**Item 10: ADJOURNMENT:** 8:39 p.m.

**NEXT MEETING:** April 4, 2018